

AVL POWERTRAIN ENGINEERING, INC. vs. FAIRBANKS MORSE ENGINE

Raymond Corbin on 11/12/2015

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WISCONSIN
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5 AVL POWERTRAIN ENGINEERING, INC.,
6

7 Plaintiff/Counterclaim Defendant,
8

9 vs. Case No. 3:14-cv-00877
10

11 FAIRBANKS MORSE ENGINE, a division of
12 COLTEC INDUSTRIES, INC.,
13

14 Defendant/Counterclaim Plaintiff.
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18 The videotaped deposition of RAYMOND CORBIN was
19 taken by the Defendant/Counterclaim Plaintiff on Thursday,
20 November 12, 2015, at 201 West Big Beaver Road, Suite 260,
21 Troy, Michigan, at 9:03 a.m.
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<p>1 Thursday, November 12, 2015</p> <p>2 Troy, Michigan</p> <p>3 9:03 a.m.</p> <p>4 * * *</p> <p>5 VIDEOGRAPHER: This is the beginning of media</p> <p>6 number one in the deposition of Mr. Ray Corbin in the</p> <p>7 matter of AVL Powertrain Engineering versus Fairbanks</p> <p>8 Morse Engine, Case Number 3:14-cv-00877. Today's date</p> <p>9 is November 12th, 2015, and the time on the monitor is</p> <p>10 9:03 a.m. My name is Tim Reitman, I'm the videographer,</p> <p>11 the court reporter is Beth LaBarge, and we are here with</p> <p>12 Huseby Global Litigation.</p> <p>13 Counsel, please introduce yourself, after which the</p> <p>14 court reporter will swear in the witness.</p> <p>15 MR. HERRMANN: Fred Herrmann for plaintiff, AVL.</p> <p>16 MR. DeGEORGE: Steve DeGeorge for the defendant.</p> <p>17 COURT REPORTER: And I will swear you in if you'll</p> <p>18 raise your right hand.</p> <p>19 THE WITNESS: Sure.</p> <p>20 COURT REPORTER: Do you solemnly swear or affirm</p> <p>21 the testimony you are about to give will be the truth,</p> <p>22 the whole truth, and nothing but the truth?</p> <p>23 THE WITNESS: I will.</p> <p>24 R A Y M O N D C O R B I N</p> <p>25 having been first duly sworn, was examined and</p>	<p>1 MR. HERRMANN: Well, the one you handed me was</p> <p>2 AVL 16329 starting Bates.</p> <p>3 BY MR. DeGEORGE:</p> <p>4 Q Yeah, that's going to be Exhibit 46. The one,</p> <p>5 Mr. Corbin, the one that you have in front of you --</p> <p>6 A Okay.</p> <p>7 Q -- is that called Master Consulting Agreement dated</p> <p>8 2003?</p> <p>9 A Master Testing Services Agreement you mean?</p> <p>10 MR. HERRMANN: This says Master Engineering</p> <p>11 Testing --</p> <p>12 A Testing Services --</p> <p>13 MR. HERRMANN: -- Services Agreement.</p> <p>14 A -- Agreement.</p> <p>15 MR. DeGEORGE: That's fine, leave that as 44, it's</p> <p>16 not the end of the world. And then we'll make this one</p> <p>17 45.</p> <p>18 (Exhibit 45 was marked for identification.)</p> <p>19 MR. DeGEORGE: And then we'll make this one 46.</p> <p>20 (Exhibit 46 was marked for identification.)</p> <p>21 BY MR. DeGEORGE:</p> <p>22 Q Just to make sure we're all on the same page here,</p> <p>23 Mr. Corbin, you've been handed, I believe you've been</p> <p>24 handed three documents which have been marked as</p> <p>25 Exhibits 44, 45, and 46.</p>
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<p>1 testified as follows:</p> <p>2 E X A M I N A T I O N</p> <p>3 BY MR. DeGEORGE:</p> <p>4 Q Good morning, Mr. Corbin.</p> <p>5 A Good morning. And please call me Ray, okay?</p> <p>6 Q Well, I think -- I would like to and --</p> <p>7 A But you can't.</p> <p>8 Q -- when we're off the record I will --</p> <p>9 A Okay.</p> <p>10 Q -- but I think for purposes of --</p> <p>11 A Testimony.</p> <p>12 Q -- being on the record --</p> <p>13 A Yeah, okay, fair enough.</p> <p>14 Q -- it will be a little more formal.</p> <p>15 A Okay, sir.</p> <p>16 MR. DeGEORGE: Why don't we mark this as 44,</p> <p>17 Defendant's 44. It looks like I have an extra one, so</p> <p>18 it's your lucky day.</p> <p>19 (Exhibit 44 was marked for identification.)</p> <p>20 MR. DeGEORGE: Oh, wait.</p> <p>21 MS. BROWN: It's different.</p> <p>22 MR. DeGEORGE: There's two different agreements</p> <p>23 there, that's why I thought I had extras. So the one</p> <p>24 that we marked as 44, it says Master Consulting</p> <p>25 Agreement on the top, correct?</p>	<p>1 A Okay.</p> <p>2 Q Exhibit Number 44 is entitled Master Engineering Testing</p> <p>3 Services Agreement dated April 18, 2011, correct?</p> <p>4 A Okay, yes.</p> <p>5 Q All right. And Exhibit Number 45 is entitled Master</p> <p>6 Consulting Agreement dated July 10, 2003, is that</p> <p>7 correct?</p> <p>8 A That's correct.</p> <p>9 Q And Exhibit Number 46 is entitled Schedule No. 15 dated</p> <p>10 January 4, 2010, is that correct?</p> <p>11 A I see that on the top of it.</p> <p>12 Q All right.</p> <p>13 MR. HERRMANN: I'm sorry, Steve, I still need 45.</p> <p>14 MR. DeGEORGE: Forty-five is Master Consulting</p> <p>15 Agreement dated 2003.</p> <p>16 MR. HERRMANN: I only have 44 and 46, the witness</p> <p>17 has all the marked exhibits. If you have another copy</p> <p>18 of that, I'd appreciate it.</p> <p>19 MR. DeGEORGE: Here you go.</p> <p>20 MR. HERRMANN: Super, thank you.</p> <p>21 MR. DeGEORGE: All right, I apologize for the</p> <p>22 confusion.</p> <p>23 BY MR. DeGEORGE:</p> <p>24 Q Let's start, Mr. Corbin, with Exhibit 45.</p> <p>25 A Okay.</p>

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<p>1 Q I'll represent to you that this is a document that was 2 produced by Caterpillar in response -- if I refer to 3 Caterpillar as "CAT," you'll know that that's what I'm 4 referring to? 5 A Absolutely, yes. 6 Q Okay. And then I believe there's a -- it used to be a 7 separate company, but I believe it's part of Caterpillar 8 now called Electro-Motive Diesel -- 9 A EMD, yes. 10 Q -- EMD -- 11 A Correct. 12 Q -- and I'll use that term -- 13 A That's fine. 14 Q -- "EMD" when I'm referring to EMD. 15 So Exhibit Number 45 entitled Master Consulting 16 Agreement dated July 10, 2003, have you seen this 17 document before, do you know what it is? 18 A I'm going to have to take some minutes to look at this 19 because I -- right now I'm not familiar with this 20 document. 21 Q Okay. Well, take -- I'm going to ask you just a couple 22 questions about it, but why don't you take a look at it 23 and we'll see what we can do. 24 A This document was signed before I was part of the 25 company, it was signed by my predecessor, Josef Maier,</p>	<p>1 July 10, 2003, do you see that? 2 A Yes. 3 Q Okay. So is it your understanding, having now looked at 4 Section 1 of Exhibit 44, that it superseded and replaced 5 the Master Consulting Agreement which is Exhibit 45? 6 A Yes. 7 Q Okay. And is it your understanding that subsequent to 8 the date of Exhibit 44, which is April 18, 2011, that 9 Master Engineering Testing Services Agreement applied to 10 engine testing work that AVL performed on behalf of CAT 11 and EMD subsequent to April 18, 2011? 12 A I do not -- I cannot attest to that as a fact. 13 Q Okay. You just don't know that one way -- 14 A I just don't know -- I just don't know one way or the 15 other. 16 Q Okay. Are you aware of any other contract between CAT 17 or EMD and AVL that might have governed the business 18 relationship between AVL and CAT subsequent to April 18, 19 2011? 20 A Can I ask a clarifying question? 21 Q Yes. 22 A Are you asking for the testing work that we did, was 23 there another agreement in place to do that testing 24 work? 25 Q Yes.</p>
Page 11	Page 13
<p>1 so I really have no intimate knowledge of this document. 2 Q Okay. Do you have any understanding as to whether or to 3 what extent this Master Consulting Agreement, 4 Exhibit 45, pertained to any of the engine testing work 5 that AVL did on behalf of CAT or EMD? 6 A I do not. 7 Q Okay. Then let us look at Exhibit 44. 8 A Do you want this back? 9 Q No, please keep that. 10 A Okay. Okay. 11 Q Exhibit 44 which is entitled Master Engineering Testing 12 Services Agreement dated April 18th, 2011, does that 13 document look familiar? I believe it bears your 14 signature on page 9. 15 A Yes, I do remember this document and it was an amendment 16 to what you produced as Exhibit Number 45. 17 Q Okay. Let us look, if you would, sticking with Exhibit 18 Number 44, Mr. Corbin, on the second page, Section 1, 19 which is entitled Previous Agreement, do you see that? 20 A Yes. 21 Q About halfway down it says, "This Master Agreement 22 supersedes and replaces the Prior Agreement," and the 23 prior agreement is -- let me make sure I get this -- the 24 prior agreement is defined in the first sentence of 25 Section 1 as the Master Consulting Agreement dated</p>	<p>1 A That was done through the purchase orders that we had 2 received from Caterpillar. 3 Q Okay. Now if you look at the first page of Exhibit 44, 4 definition (b), Master Agreement, do you see that? 5 A Yes. 6 Q And that states, "'Master Agreement' means the terms and 7 conditions of this Master Engineering Testing Services 8 Agreement together with the exhibits, schedules or 9 written purchase orders entered into or issued under 10 this Master Engineering Testing Services Agreement," did 11 I read that correctly? 12 A Yes. 13 Q Now, does that have any bearing on the answer you just 14 provided concerning the purchase orders you referred to? 15 A Can I read that -- can I read that, please -- 16 Q Yes. 17 A -- again? 18 I think it refers to the purchase orders that I 19 referred to in this -- in this line, so --. 20 I don't -- I don't understand the relevance 21 of -- the relevance of the question, I guess. 22 Q Well, I'm trying to understand -- well, I would like 23 your understanding on whether the purchase orders you 24 referred to are ultimately governed by the terms of 25 Exhibit 44?</p>

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<p>1 MR. HERRMANN: Objection to the extent it asks for</p> <p>2 a legal conclusion, but go ahead, Ray, you can answer to</p> <p>3 the best of your knowledge.</p> <p>4 A Well, I think this -- as I remember this document, it</p> <p>5 was over a period of time being developed between</p> <p>6 ourselves and Caterpillar, so therefore, waiting -- not</p> <p>7 waiting for this document, we took purchase orders in</p> <p>8 anticipation of this document being in place.</p> <p>9 BY MR. DeGEORGE:</p> <p>10 Q Right. And before this document, you had the Master</p> <p>11 Consulting Agreement --</p> <p>12 A Right.</p> <p>13 Q -- which is Exhibit 45?</p> <p>14 A Right.</p> <p>15 Q Okay. I'll tell you my understanding having read these</p> <p>16 documents, and I'm just trying to --</p> <p>17 A Sure.</p> <p>18 Q -- see if you have a different understanding. If you</p> <p>19 have no understanding, that's fine.</p> <p>20 A Um-hmm.</p> <p>21 Q What I need to know is if your view is different.</p> <p>22 A Sure.</p> <p>23 Q My understanding is that between July 10 of two</p> <p>24 thousand -- July 10 of 2003 and April 18, 2011, the</p> <p>25 testing work that AVL did for CAT and EMD -- well, for</p>	<p>1 Q When you're saying that's what "this document" does,</p> <p>2 you're --</p> <p>3 A Meaning --</p> <p>4 Q -- referring to --</p> <p>5 A -- Exhibit 44.</p> <p>6 Q -- Exhibit 44?</p> <p>7 A Forty-four, right.</p> <p>8 Q Okay. So am I correct that your understanding is that</p> <p>9 subsequent to April 18, 2011, Exhibit Number 44 governed</p> <p>10 the engine testing work that AVL did for CAT and EMD?</p> <p>11 MR. HERRMANN: Let me place an objection here only</p> <p>12 to the extent that Exhibit 44 carries "Confidential</p> <p>13 Draft" on it and I see it's only signed by</p> <p>14 Mr. Corbin --</p> <p>15 A Right, right, I just was wondering the same thing.</p> <p>16 MR. HERRMANN: -- so I only note that for the</p> <p>17 record because I would just object to the extent that</p> <p>18 this is not a final or an executed document, but --</p> <p>19 MR. DeGEORGE: Well, it is executed.</p> <p>20 BY MR. DeGEORGE:</p> <p>21 Q You signed it, right?</p> <p>22 A I signed it, but it was not signed by the customer.</p> <p>23 Q Right. But you signed it?</p> <p>24 A Correct.</p> <p>25 Q Okay. Are you aware of any other version of the Master</p>
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<p>1 CAT was governed by the Master Consulting Agreement</p> <p>2 which is Exhibit 45 and then after April 18, 2011, that</p> <p>3 engine testing work was governed by the Master</p> <p>4 Engineering Testing Services Agreement which is</p> <p>5 Exhibit 44, that's my understanding. Is that -- do you</p> <p>6 have any understanding on that?</p> <p>7 A I, again, I do not understand -- I did not sign</p> <p>8 Number 45. I was aware, only aware that there was a</p> <p>9 consulting agreement there. I'm not sure how that plays</p> <p>10 in as a testing -- from a testing services standpoint.</p> <p>11 But we realized we needed to update our consulting</p> <p>12 agreement with them, which it had been 11 years at that</p> <p>13 point, almost 11 -- or eight years, so we decided to</p> <p>14 update that to encompass everything we were doing with</p> <p>15 them.</p> <p>16 Q Okay. And what's your understanding as to what</p> <p>17 Exhibit 45 governed after April 18, 2011?</p> <p>18 A This document?</p> <p>19 Q Exhibit 44, I'm sorry.</p> <p>20 A Okay, this document. I think -- this document, we did</p> <p>21 consulting work for Caterpillar and design work, that's</p> <p>22 what this document will have -- will have handled. We</p> <p>23 added test services to our umbrella of things we were</p> <p>24 doing for Caterpillar at that point, that's what this</p> <p>25 document does.</p>	<p>1 Engineering Testing Services Agreement which is</p> <p>2 Exhibit 44?</p> <p>3 A I am not aware of anything else other than this.</p> <p>4 Q So as you sit here today, what is your understanding as</p> <p>5 to the relationship between Exhibit 44 and purchase</p> <p>6 orders between CAT and AVL for engine testing subsequent</p> <p>7 to April 18, 2011?</p> <p>8 A Well, subsequent to April 18th, we were accepting</p> <p>9 purchase orders for actual testing services from them.</p> <p>10 Q I understand that. That wasn't my question. My</p> <p>11 question was how does Exhibit 44 relate to such purchase</p> <p>12 orders?</p> <p>13 MR. HERRMANN: I'll object to the extent it calls</p> <p>14 for a legal conclusion.</p> <p>15 BY MR. DeGEORGE:</p> <p>16 Q Who would know, who would have some idea of what the</p> <p>17 contracts you all signed meant?</p> <p>18 A We -- we have legal counsel in the case of contracts and</p> <p>19 that's how these contracts are prepared, through our</p> <p>20 legal counsel, and this was done through Caterpillar's</p> <p>21 legal counsel.</p> <p>22 Q I didn't ask about Caterpillar, I asked about AVL.</p> <p>23 A Okay.</p> <p>24 Q Who would know what this contract means from AVL's</p> <p>25 perspective?</p>

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<p style="text-align: right;">Page 18</p> <p>1 A Who would know. Interesting question. Within our 2 organization, all of our contracts are handled through 3 our financial -- our financial part of our company, so 4 there is a legal representation that comes in through 5 that organization, which is Chet Ricker's organization. 6 Q Which is whose organization? 7 A Chet Ricker's organization. 8 Q Chet Ricker's organization. What is his organization, 9 is that a separate company? 10 A No. He's the CFO and he -- in there inside of that is 11 where we do any legal preparation that we have to have 12 done for our contracts and et cetera, we -- you know, 13 we're not respon -- we're not -- do not have the 14 authority inside of our operations area to do contracts 15 on our own, so those are handled through that 16 organization. 17 Q Okay. Do you have any idea whether you read this 18 Exhibit 44 before you signed it? 19 A Well, of course I read it before I signed it. 20 Q All right. And but as you sit here today, you don't 21 understand whether or to what extent Exhibit 44 relates 22 to purchase orders between CAT and AVL which were -- 23 MR. HERRMANN: Object to the form of the question. 24 Go ahead, Ray, you can answer. 25 A Certainly I understand that before -- that purchase</p>	<p style="text-align: right;">Page 20</p> <p>1 regulations, orders, and other governmental requirements 2 pertaining to the performance of such services; it will 3 perform such services in full compliance with all 4 applicable laws, regulations, orders, and other 5 governmental requirements; it will perform such services 6 in compliance with all necessary and applicable 7 permits," did I read that correctly? 8 A Yes. 9 Q And that was a representation and warranty that AVL made 10 to Caterpillar in Exhibit Number 44? 11 A Okay. 12 Q Correct? 13 A That's what's written here, yes. 14 Q And then if you go down to subsection 5(f), it states, 15 "Consultant," which that's AVL, right? 16 A Yes. 17 Q "Shall comply with all applicable laws and regulations." 18 That's another representation and warranty that AVL 19 made to CAT, correct? 20 A Yes. 21 Q Okay. Now, in the summer of 2011 when the parties, 22 CAT -- I'm sorry -- AVL and FME were trying to figure 23 out issues related to FME's air permit, do you recall 24 what role Mark Thimke played in that effort? 25 A Yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 orders are -- would be as part of this master services 2 agreement a legal document or methodology which we would 3 do work for Caterpillar. That's what this master 4 services agreement part of this provides. Prior to this 5 master services agreement and, obviously, with that one 6 in place, we were continuing to do purchase orders 7 through a normal purchase order process that we have 8 with Caterpillar. 9 BY MR. DeGEORGE: 10 Q Okay, maybe I'll just talk to Mr. Ricker about this 11 because we're not getting anywhere. 12 Let's look at the -- let's look at page 4 of 13 Exhibit 44, Section 5(c), do you see that sort of in the 14 middle of page 4? 15 A Yep. 16 Q And down toward the bottom of Section 5(c) -- by the 17 way, this is the representations and warranties that AVL 18 made to Caterpillar, do you see that, the heading of 19 Section 5, "Representations and Warranties. Consultant 20 represents and warrants to Caterpillar that," did I read 21 that correctly? 22 A That's correct. 23 Q And down in subsection (c) toward the bottom, about 24 three quarters of the way down it says, "It," which I 25 believe refers to AVL, "is aware of all laws,</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. HERRMANN: Let me object to the form of the 2 question. Go ahead, Ray. 3 A I could say yes. 4 BY MR. DeGEORGE: 5 Q What role did he play? 6 A He was -- he acted as our legal counsel in the state of 7 Wisconsin to help and guide us in the permitting and air 8 quality -- understanding the local regulations and 9 applicable laws at that time. 10 Q Okay. And was he -- was one of his objectives as you 11 understand it or one of the reasons he was hired to see 12 what he could do to help the parties either negotiate 13 with Wisconsin DNR to either revise the existing permit 14 or secure a new permit? 15 A Well, when we first hired him, it was to 16 understand -- understand the permitting issues that 17 suddenly came to light at that time and so Mark, through 18 that process, you know, we at our own cost brought Mark 19 in to try and see with a new set of eyes how we could 20 approach the permitting issues that obviously came into 21 play and even brought in our own consultant from an air 22 quality calculations standpoint to help us calculate, so 23 that's what Mark's role was with -- basically, a legal 24 consultant for us. 25 Q Okay. Other than what you just described, in 2011 did</p>

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<p>1 Mr. Thinke play any other role for AVL?</p> <p>2 A In what way?</p> <p>3 Q I don't know, I'm asking you.</p> <p>4 A Okay.</p> <p>5 Q You just told me what role he played --</p> <p>6 A Right.</p> <p>7 Q -- and I'm asking if that's it?</p> <p>8 A That's it.</p> <p>9 Q Okay. Who was the air consultant you referred to?</p> <p>10 A You know, I tried to think of that last night, I knew</p> <p>11 you were going to ask that question, and I can't -- I</p> <p>12 have it in my files. I do not have that name. I can</p> <p>13 find that out, but I don't know that right now.</p> <p>14 Q What files do you have it in?</p> <p>15 A Well, it's in all the files that you've seen, so --</p> <p>16 Q Well, you said I have it in my files. What were you</p> <p>17 referring to?</p> <p>18 A Well, it was produced as part of my -- as part of</p> <p>19 evidential material, so --.</p> <p>20 Q By whom?</p> <p>21 A I don't know who pro -- I gave -- I gave them all my</p> <p>22 files.</p> <p>23 Q Okay, that's good. What files did you -- where did you</p> <p>24 have files?</p> <p>25 A I had files on my computer which I produced and I had</p>	<p>1 Q And do you do consulting work for AVL?</p> <p>2 A I do.</p> <p>3 Q How much, what percentage of your business?</p> <p>4 A Probably 70 percent of my business is still with AVL.</p> <p>5 Q So your relationship with AVL is very important to you?</p> <p>6 A Sure, I mean it always has been.</p> <p>7 Q Are you being paid for your time today?</p> <p>8 A No.</p> <p>9 Q Do you have any sort of a separation agreement with AVL</p> <p>10 from when you left their employ?</p> <p>11 A No.</p> <p>12 Q Tell me the circumstances under which you left AVL's</p> <p>13 employ?</p> <p>14 A It was a personal decision that actually that decision</p> <p>15 had started long before this -- this had</p> <p>16 actually -- this all unfolded, I had actually talked to</p> <p>17 several people, to my boss, and had told him that I</p> <p>18 wanted to move into a phase of retirement, which I had</p> <p>19 given them a date, which was the end of the year, and so</p> <p>20 that's exactly what I executed with them and then I was</p> <p>21 asked to continue to do consulting work for them.</p> <p>22 Q So your departure from AVL, I just want to make sure</p> <p>23 I have --</p> <p>24 A Sure.</p> <p>25 Q -- this straight, your departure from AVL was entirely</p>
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<p>1 files, handwritten files that I produced.</p> <p>2 Q Tell me about the handwritten files.</p> <p>3 A In what way?</p> <p>4 Q What did you have?</p> <p>5 A Just notes that I had taken during the period of time.</p> <p>6 Q And who did you give those to?</p> <p>7 A I gave those to my legal counsel.</p> <p>8 Q How much was there? Hundreds of pages?</p> <p>9 A Oh, not hundreds, no.</p> <p>10 Q What sort of notes did you take?</p> <p>11 A I just took as things progressed day-to-day notes about</p> <p>12 what we needed to do, they were actions, they were</p> <p>13 things that we were thinking about doing, they were</p> <p>14 discussions with FME in there, so they're typical</p> <p>15 engineering type notes that I would take.</p> <p>16 Q And who did you give those to?</p> <p>17 A I gave those to our legal counsel.</p> <p>18 Q Who is your legal counsel?</p> <p>19 A This gentleman right here. Actually, AVL's legal</p> <p>20 counsel, because I no longer reside -- I no longer work</p> <p>21 for them.</p> <p>22 Q Who do you work for now?</p> <p>23 A I work for my own company.</p> <p>24 Q And what's the name of your company?</p> <p>25 A Corbin Clear Path Consultants.</p>	<p>1 your decision?</p> <p>2 A Yes.</p> <p>3 Q Tell me about your -- you said you had your computer</p> <p>4 and -- when I was asking you some questions about --</p> <p>5 A Sure.</p> <p>6 Q -- documents --</p> <p>7 A Right.</p> <p>8 Q -- your files, you made reference to your computer.</p> <p>9 What computer were you referring to?</p> <p>10 A The AVL computer that I had at that particular time.</p> <p>11 Q At what particular time?</p> <p>12 A When I was -- during the time that this -- the whole FME</p> <p>13 was going on. When I separated on 12/31/2011, I had</p> <p>14 files that I had accumulated and subsequently produced,</p> <p>15 all emails, et cetera, as required.</p> <p>16 Q And did you keep that computer when you left AVL?</p> <p>17 A I still have an AVL computer.</p> <p>18 Q You still have an AVL computer and 70 percent of your</p> <p>19 work is for AVL?</p> <p>20 A Right. Yeah.</p> <p>21 Q Tell me roughly what 70 percent of your annual revenue</p> <p>22 would be, your company's annual revenue, roughly?</p> <p>23 A One hundred -- let's see. Probably -- about 100,000.</p> <p>24 Q Now, we were talking about Mr. Thinke. Do you recall an</p> <p>25 idea that I think was his in the summer of 2011 which I</p>

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<p>1 think some people referred to as the judicial approach</p> <p>2 or judicial solution, does that ring any bells?</p> <p>3 A Yes.</p> <p>4 Q Tell me what you recall about that?</p> <p>5 A Well, he -- at that time, and I don't -- I honestly</p> <p>6 don't remember all the details, but I remember he</p> <p>7 proposed some different approach to -- to the permitting</p> <p>8 that would take a much different approach than what FME</p> <p>9 at that time was considering, that's the basis of what I</p> <p>10 remember.</p> <p>11 Q Okay. Do you recall that the judicial approach that</p> <p>12 Mr. Thimke proposed would have involved FME</p> <p>13 intentionally violating its permit?</p> <p>14 A I believe there was an element -- yes, I believe there</p> <p>15 was an element of that.</p> <p>16 Q And do you recall that as part of that discussion,</p> <p>17 Mr. Thimke's judicial approach idea, that AVL had agreed</p> <p>18 that if the judicial approach were pursued, AVL would</p> <p>19 either pay or reimburse FME for any fines or penalties</p> <p>20 that might be assessed?</p> <p>21 A I do not remember that.</p> <p>22 Q You don't remember that?</p> <p>23 A No.</p> <p>24 Q Okay. Now, would you agree that had FME pursued the</p> <p>25 judicial approach conceived by Mr. Thimke, that such an</p>	<p>1 to go to CAT and get their approval, is that what you're</p> <p>2 saying?</p> <p>3 A Oh, I'm saying within this legal document, obviously, we</p> <p>4 would have done that.</p> <p>5 Q Okay, fair enough. If you would turn to page 8 of</p> <p>6 Exhibit 44, Section 19, Termination, do you see that?</p> <p>7 A Yep.</p> <p>8 Q Okay. And I'm not -- I'm not asking for a legal</p> <p>9 opinion, I'm just asking for your interpretation of a</p> <p>10 portion of Section 19(a) which reads, quote, "At any</p> <p>11 time, Caterpillar may terminate the services under this</p> <p>12 Master Agreement or under any schedule or purchase order</p> <p>13 by giving Consultant," which is AVL, "written notice, in</p> <p>14 which event Consultant shall be reimbursed only for</p> <p>15 authorized services performed and authorized reasonably</p> <p>16 incurred prior -- and authorized expenses reasonably</p> <p>17 incurred prior to receipt of such notice," did I read</p> <p>18 that correctly?</p> <p>19 A Yes.</p> <p>20 Q So is it your understanding, not a legal conclusion,</p> <p>21 just your understanding, that under Exhibit 44, CAT had</p> <p>22 the unilateral right to terminate the agreement for</p> <p>23 whatever reason and whenever it chose?</p> <p>24 A That's -- that would be my interpretation of this.</p> <p>25 Q Okay, thank you. If you'll -- let's go back very</p>
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<p>1 approach would have violated Sections 5(c) and 5(f), the</p> <p>2 portions we just read about complying with all necessary</p> <p>3 and applicable permits and environmental laws and</p> <p>4 regulations in Exhibit 44, that that approach would have</p> <p>5 violated those provisions, is that a fair statement?</p> <p>6 A I believe that's a legal question that I'm unable to</p> <p>7 answer.</p> <p>8 Q Okay. Well, I don't care about your legal opinion. The</p> <p>9 contract contains your company's, you signed it,</p> <p>10 representation that all the services would be -- would</p> <p>11 be performed, quote, in compliance with all necessary</p> <p>12 and applicable permits, end quote.</p> <p>13 Now, had the judicial approach been pursued by FME,</p> <p>14 the work would have by design not been in compliance</p> <p>15 with FME's air permit, correct?</p> <p>16 MR. HERRMANN: Objection to form and to the extent</p> <p>17 it calls for a legal conclusion. Go ahead, Ray.</p> <p>18 A You know, if you take this at face value, I would agree,</p> <p>19 but you're also not considering the fact that had</p> <p>20 something along this line been put in place, we would</p> <p>21 not have done this without consulting our customer, our</p> <p>22 customer.</p> <p>23 BY MR. DeGEORGE:</p> <p>24 Q Okay. So before the -- if FME would have agreed to</p> <p>25 pursue the judicial approach, you would have still had</p>	<p>1 briefly to Exhibit 45, which is the Master Consulting</p> <p>2 Agreement dated July 10, 2003. I know that you didn't</p> <p>3 sign this.</p> <p>4 A Right.</p> <p>5 Q I just want to -- by the way, who is --</p> <p>6 A Josef Maier.</p> <p>7 Q Josef Maier, is he your predecessor?</p> <p>8 A Yes.</p> <p>9 Q Okay. Do you know where he is these days?</p> <p>10 A He is in Austria.</p> <p>11 Q Okay. Is he still with AVL?</p> <p>12 A Yes.</p> <p>13 Q Okay. Now, on Exhibit 45 on page 5, Section 15, do you</p> <p>14 see that, it's the termination provision?</p> <p>15 A Right.</p> <p>16 Q And it reads, "At any time, Caterpillar may terminate</p> <p>17 the services under this agreement or under any schedule</p> <p>18 by giving Consultant written notice, in which event</p> <p>19 Consultant shall be reimbursed only for authorized</p> <p>20 services performed and authorized expenses reasonably</p> <p>21 incurred prior to receipt of such notice," did I read</p> <p>22 that correctly?</p> <p>23 A Yes.</p> <p>24 Q And again, is it your interpretation that this provision</p> <p>25 afforded Caterpillar the right to terminate this</p>

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1	contract at any time and for any reason?	1	A Right.
2	A It is my interpretation of that. I'm not a lawyer, but	2	Q It says, "This schedule is issued pursuant to the
3	yes.	3	Agreement." And the Agreement is Exhibit 45, as
4	Q Thank you. By the way, do you know, did you ever	4	defined. "All of the terms and conditions of said
5	provide, you personally, Ray Corbin, ever provide copies	5	Agreement," which again is in reference to Exhibit 45,
6	of Exhibit 44 or Exhibit 45 to anybody at FME?	6	"including any amendments thereto, are incorporated
7	A No, I do not believe so.	7	herein and made a part hereof as if such terms and
8	Q Do you know whether anybody else at AVL provided copies	8	conditions were set forth in this schedule," did I read
9	of these contracts to FME?	9	that correctly?
10	A I do not have that knowledge.	10	A Yes.
11	Q Okay. But you didn't?	11	Q So is it your understanding that Schedule No. 15 was
12	A I did not.	12	ultimately governed by the terms of Exhibit Number 45?
13	Q And you didn't ask anybody else to?	13	A Yes.
14	A No.	14	Q Did you personally provide anybody at FME with a copy of
15	Q If you'd take a look at Exhibit 46, Mr. Corbin, it's	15	Exhibit 46?
16	entitled Schedule No. 15 --	16	A I did not personally provide anybody a copy.
17	A Right.	17	Q Did you ask anybody else to?
18	Q -- which is that your signature on the first page?	18	A No.
19	A It's not my signature, but I authorized this and it	19	Q Do you know whether anybody else did?
20	was -- at that time, this was our admin, I was out of	20	A No.
21	town, she signed this on my behalf and initialed it,	21	Q If you'll turn to page 4 of Exhibit -- by the way,
22	so --.	22	Exhibit 46, this pertained, I believe, if you'll look at
23	Q So -- and you authorized her to sign --	23	the top of page 2, it looks like it pertained to the
24	A Excuse me. Dwight Hansell signed this on my behalf on	24	testing of Caterpillar's C175 16-cylinder engine?
25	3/19/16, or 14, I can't tell.	25	A Yes.
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1	Q And did you authorize Mr. Hansell to sign Exhibit 46?	1	Q Is that right?
2	A Yes.	2	A Yes.
3	Q Can you tell me what this is?	3	Q Okay. And if you'll turn to page 4, do you see
4	A It -- can I read through this?	4	paragraph number 9 in the top portion of page 4?
5	Q Yes.	5	A Yes.
6	A I want to make sure before I answer that question.	6	Q It says, "Conducting testing 24 hours per day, five days
7	Q Please do.	7	per week." Was that your understanding of the -- was it
8	A So these schedules were the base -- this schedule was	8	your understanding that this was the contemplated level
9	the basis of the test work that we -- the test work we	9	of testing that AVL was going to be performing?
10	were going to do for Caterpillar and this basically was	10	A This is detail that I was not involved in.
11	the prelude to a purchase order that we would receive,	11	Q So you don't know one way or the other?
12	so this defined -- it's basically a statement of work to	12	A No.
13	us is what it is.	13	Q But that's what it says?
14	Q In the opening paragraph of Exhibit 46, do you see it	14	A Right, that's what it says.
15	says, "This Schedule 15 is effective as of January 4,	15	Q And you signed it?
16	2010, to the Master Consulting Agreement by and between	16	A Yes.
17	AVL and Caterpillar which was entered into as of	17	Q So that's what was agreed to?
18	July 10, 2003," do you see that?	18	A Yes, I guess that's what's --.
19	A Yeah.	19	Q Mr. Corbin, I'll hand you what has been previously
20	Q And I believe -- well, my belief doesn't really matter.	20	marked as Defendant's Exhibit 7. Do you recall seeing
21	Would it be your understanding that that is	21	this document before?
22	referring to Exhibit 45?	22	A No.
23	A Yes.	23	Q It appears to be an AVL document, right?
24	Q And if you'll look at Section 6 on the first page of	24	A Well, it has the AVL logo on top.
25	Exhibit 46?	25	Q Okay. And it's dated April 9, 2010, correct?

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<p>1 A Yes.</p> <p>2 Q And it says -- it appears to be from Mr. Vietinghoff to</p> <p>3 Isaac Fox at Caterpillar and the opening sentence says,</p> <p>4 "Further to your request to conduct C280 piston seizure</p> <p>5 testing I can confirm a budgetary quotation for a rental</p> <p>6 of a test bay at our facility in Beloit, Wisconsin as</p> <p>7 follows," did I read that correctly?</p> <p>8 A Yes.</p> <p>9 Q And do you recall whether AVL did testing of a C280</p> <p>10 Caterpillar engine at the Beloit plant?</p> <p>11 A I am not a hundred percent sure, so I'm going to have to</p> <p>12 say I'm not sure.</p> <p>13 Q And the budgetary quotation right below the opening</p> <p>14 sentence says, "Base test bay per month, \$215,000,"</p> <p>15 right?</p> <p>16 A Right.</p> <p>17 Q And then in parentheses it says, "3 shift, 5 day,</p> <p>18 operation," correct?</p> <p>19 A Correct.</p> <p>20 Q So is it -- just from reading this, and I know that this</p> <p>21 isn't a document you prepared or you're familiar with,</p> <p>22 but this would suggest, would it not, that in exchange</p> <p>23 for \$215,000 per month, AVL was proposing to conduct</p> <p>24 testing of the C280 engine 24 hours a day, five days a</p> <p>25 week?</p>	<p>1 had a session yesterday just to talk about how this</p> <p>2 mechanically would work. This is not my first</p> <p>3 deposition, so I just wanted to be refreshed as to how</p> <p>4 you would handle it, how this -- it's the first time</p> <p>5 I've had one taped, so we kind of talked about the</p> <p>6 mechanics of this.</p> <p>7 Q Okay. And you said you reviewed your materials. What</p> <p>8 did you review and where did you get them from?</p> <p>9 A I went back through my -- my notebooks and I looked at</p> <p>10 my -- at whatever pertinent emails that I could find</p> <p>11 that, you know, that were there.</p> <p>12 Q What notebooks did you look through?</p> <p>13 A The ones that we originally talked about, the ones that</p> <p>14 I said I had taken notes, and I have those in my</p> <p>15 possession still.</p> <p>16 Q Okay. I thought you said you gave those to your</p> <p>17 counsel?</p> <p>18 A I gave copies of those to counsel.</p> <p>19 Q Okay. And you still have --</p> <p>20 A I still have --</p> <p>21 Q -- your own copies?</p> <p>22 A Yes. Because there are other notes other than just FME</p> <p>23 in there --</p> <p>24 Q Understood.</p> <p>25 A -- obviously, so --.</p>
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<p>1 A Per this document, that's what it says.</p> <p>2 Q Okay. I'm handing you, Mr. Corbin, what was previously</p> <p>3 marked as Defendant's Exhibit 12.</p> <p>4 A Okay.</p> <p>5 Q By the way, just in case you're curious, you probably</p> <p>6 know that Mr. Vietinghoff and Mr. Plewa and Mr. Hansell</p> <p>7 had their depositions taken recently --</p> <p>8 A I have heard there were other depositions, I was not</p> <p>9 sure who.</p> <p>10 Q -- and we had marked some exhibits at those depositions,</p> <p>11 so --</p> <p>12 A Okay.</p> <p>13 Q -- during the course of your deposition if I hand you a</p> <p>14 document that's previously been marked, that's the</p> <p>15 explanation --</p> <p>16 A Okay.</p> <p>17 Q -- if there's any --</p> <p>18 A Very good, thank you.</p> <p>19 Q To avoid any confusion.</p> <p>20 A I suspected that was it, but I wasn't quite sure.</p> <p>21 Q By the way, what did you do to prepare for your</p> <p>22 deposition today?</p> <p>23 A What did I do. I slept last night, for the first thing.</p> <p>24 Q Well, good, so did I.</p> <p>25 A So I just basically did review of whatever I had and we</p>	<p>1 Q Thank you. And your meeting yesterday was with</p> <p>2 Mr. Herrmann?</p> <p>3 A Yes.</p> <p>4 Q And did you review any specific documents yesterday when</p> <p>5 you were with Mr. Herrmann? I don't want to know</p> <p>6 anything about what you guys talked about, I'm just</p> <p>7 wondering if you reviewed any specific documents?</p> <p>8 A So I'm going --</p> <p>9 MR. HERRMANN: Right, don't discuss any</p> <p>10 communications we had, but to the extent you looked at</p> <p>11 documents before --</p> <p>12 THE WITNESS: Yeah.</p> <p>13 MR. HERRMANN: -- today, you can describe those.</p> <p>14 A There were documents that were produced that I looked</p> <p>15 at, yes.</p> <p>16 BY MR. DeGEORGE:</p> <p>17 Q And do you remember what those were?</p> <p>18 THE WITNESS: Can I talk in detail?</p> <p>19 MR. HERRMANN: Absolutely.</p> <p>20 A We looked at internal documents at that time only,</p> <p>21 things that bared my -- mostly my -- my -- my direct</p> <p>22 involvement in, and that's it, it was directed towards</p> <p>23 what my direct involvement was.</p> <p>24 BY MR. DeGEORGE:</p> <p>25 Q Do you recall any specific documents that come to mind</p>

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<p>1 that you looked at yesterday?</p> <p>2 THE WITNESS: Fred? Okay.</p> <p>3 MR. HERRMANN: To the best of your memory, Ray, go</p> <p>4 ahead.</p> <p>5 A The master services agreement that we signed. There</p> <p>6 were doc -- there were some letters of when we entered</p> <p>7 into the period of -- I'll call it the permitting</p> <p>8 craziness that we went through and the facility stuff,</p> <p>9 there were documents that I -- that were from Bottorff,</p> <p>10 from Whittier that we reviewed and letters that I had</p> <p>11 written them, so we went through those documents.</p> <p>12 BY MR. DeGEORGE:</p> <p>13 Q Okay. Had you met with AVL's counsel related to this</p> <p>14 lawsuit before yesterday?</p> <p>15 A I can't remember if we've had any other meetings. I</p> <p>16 mean, I was -- I think there was one, just one short</p> <p>17 meeting where they described that we're --</p> <p>18 MR. HERRMANN: Don't --</p> <p>19 BY MR. DeGEORGE:</p> <p>20 Q I don't want to hear --</p> <p>21 MR. HERRMANN: Don't discuss --</p> <p>22 Q -- what you --</p> <p>23 MR. HERRMANN: -- what was discussed --</p> <p>24 Q -- talked about --</p> <p>25 THE WITNESS: Okay.</p>	<p>1 business?</p> <p>2 A For my business? It's Don Manvel, our CEO.</p> <p>3 Q Have you discussed -- is it M-a-n-v-e-l?</p> <p>4 A Yes.</p> <p>5 Q Have you discussed anything about this lawsuit with</p> <p>6 Mr. Manvel?</p> <p>7 A No.</p> <p>8 Q All right, let's look at Exhibit 12. I'll represent to</p> <p>9 you, Mr. Corbin, that this is a document that AVL</p> <p>10 produced in this lawsuit. Does it look familiar to you?</p> <p>11 A Could I look through it, please?</p> <p>12 Q Yes, please. By the way, that -- you raise a good</p> <p>13 point. Whenever I hand you a document, I want you to</p> <p>14 understand that this is your deposition --</p> <p>15 A Right.</p> <p>16 Q -- and I want you to take whatever time you need to</p> <p>17 familiarize yourself with whatever I give you. Now,</p> <p>18 having said that, in most instances I may just have one</p> <p>19 or two questions about a document --</p> <p>20 A Sure.</p> <p>21 Q -- so we may get to a question and then you may want to</p> <p>22 say, "I need to spend another minute looking at that</p> <p>23 page," or whatever, but I want you to understand</p> <p>24 whatever time you need, you have, okay?</p> <p>25 A Right. So this document I have seen and this was a</p>
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<p>1 Q -- I was just wondering if you --</p> <p>2 MR. HERRMANN: -- but you can talk about if there</p> <p>3 were any other meetings.</p> <p>4 A There was one other meeting that I'm aware of.</p> <p>5 BY MR. DeGEORGE:</p> <p>6 Q Okay. And roughly when was that?</p> <p>7 A Months ago, several months ago.</p> <p>8 Q Have you spoken -- by the way, are you familiar with the</p> <p>9 Complaint that AVL filed in this case?</p> <p>10 A Roughly, because the Complaint -- only roughly because</p> <p>11 the Complaint was filed after I left the company, so I</p> <p>12 have no -- no reason to be involved in that Complaint</p> <p>13 because I'm no longer the president of that company.</p> <p>14 Q Right. So is it fair to say that you played zero role</p> <p>15 in the preparation of the Complaint?</p> <p>16 A Yes.</p> <p>17 Q Have you seen the Complaint?</p> <p>18 A No.</p> <p>19 Q So as you sit here today, you have never laid eyes on</p> <p>20 the Complaint that AVL filed in this case?</p> <p>21 A That's correct.</p> <p>22 Q Have you spoken with Mr. Vietinghoff since his</p> <p>23 deposition?</p> <p>24 A No.</p> <p>25 Q Who's your primary contact person at AVL for your</p>	<p>1 document which we reviewed this with the owner of our</p> <p>2 company to be able to prepare and agree to the master</p> <p>3 services agreement dated April 18th of 2011.</p> <p>4 Q And who was the owner of your company you reviewed this</p> <p>5 with?</p> <p>6 A Helmut List.</p> <p>7 Q And where -- did that occur over the telephone or in</p> <p>8 person?</p> <p>9 A It was telephone.</p> <p>10 Q And he's in Austria?</p> <p>11 A Yeah.</p> <p>12 Q And what was the purpose of going over this with</p> <p>13 Mr. List?</p> <p>14 A Because --</p> <p>15 Q Or Dr. List, I believe?</p> <p>16 A Professor List.</p> <p>17 Q Professor List.</p> <p>18 A Right.</p> <p>19 Q Or Professor Dr. List --</p> <p>20 A Yeah.</p> <p>21 Q -- I think Mr. Vietinghoff told us.</p> <p>22 A Yeah, it is Professor List is how he's known.</p> <p>23 In the master services agreement, of course, these</p> <p>24 are pretty much standard terms and conditions from</p> <p>25 Caterpillar. We as a company often will try and work</p>

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<p>1 with companies to modify their standard terms and</p> <p>2 conditions, there are certain things that we do not</p> <p>3 necessarily want to sign up for. And you can guess what</p> <p>4 those are, you know, IP liability, et cetera. This was</p> <p>5 a document prepared to get Professor List comfortable</p> <p>6 that we could sign the standard terms and conditions,</p> <p>7 which is what we ultimately did.</p> <p>8 Q And you're talking about the contract that you</p> <p>9 ultimately signed with Caterpillar --</p> <p>10 A Yeah, your Exhibit 44.</p> <p>11 Q Correct, all right. So this internal AVL document that</p> <p>12 you discussed with Professor List pertained to the</p> <p>13 contract, Exhibit Number 44, that AVL ultimately</p> <p>14 signed --</p> <p>15 A Yes.</p> <p>16 Q -- that you signed?</p> <p>17 A Yes.</p> <p>18 Q And as I understand it from Mr. Vietinghoff's testimony,</p> <p>19 that at the end of the day, AVL signed the Caterpillar</p> <p>20 contract without any changes?</p> <p>21 A That's correct.</p> <p>22 Q Okay. I just want to ask you just a couple quick</p> <p>23 questions. If you would go to page 9 of Exhibit 12, do</p> <p>24 you see the second bulleted item from the bottom, it</p> <p>25 says, "AVL wants a 3 year commitment for 3 test cells in</p>	<p>1 VIDEOGRAPHER: It's 9:56.</p> <p>2 MR. DeGEORGE: Why don't we take a couple minutes.</p> <p>3 VIDEOGRAPHER: Off the record, 9:56 a.m.</p> <p>4 (Short recess.)</p> <p>5 VIDEOGRAPHER: We're back on the record at</p> <p>6 10:12 a.m.</p> <p>7 MR. DeGEORGE: All right. Let's mark this as 47, I</p> <p>8 think.</p> <p>9 (Exhibit 47 was marked for identification.)</p> <p>10 A Thank you.</p> <p>11 BY MR. DeGEORGE:</p> <p>12 Q Mr. Corbin, you've been handed what has been marked as</p> <p>13 Exhibit Number 47, and if you'd just take a minute to</p> <p>14 familiarize yourself with it, I just have just a couple</p> <p>15 of questions --</p> <p>16 A Okay.</p> <p>17 Q -- about a couple specific pieces.</p> <p>18 I think what I'm going to ask you --</p> <p>19 A Okay.</p> <p>20 Q -- about this document, Mr. Corbin, would probably not</p> <p>21 require you to spend --</p> <p>22 A Yeah, I --</p> <p>23 Q -- a lot of time with it, but basically, can you tell us</p> <p>24 what this is?</p> <p>25 A With our customers, we always submit a proposal</p>
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<p>1 Beloit in exchange for a 4 percent reduction on price.</p> <p>2 Purchasing says signing the METSA is a requirement."</p> <p>3 Tell me what this means, if you recall?</p> <p>4 A We had placed a considerable amount of capital into</p> <p>5 Beloit at that point, and in order for us to be assured</p> <p>6 that we were going to return -- have a return on</p> <p>7 investment for the capital and the time that we had put</p> <p>8 in setting up that facility, because it really was in</p> <p>9 pretty bad shape when we got there, we needed to get</p> <p>10 Caterpillar to try and agree to a long-term contract</p> <p>11 with us, and to do that, we were going to offer them a</p> <p>12 price break to entice them to a long-term contract.</p> <p>13 Q And then on page 10 there's a bulleted item about a</p> <p>14 little more than halfway down, it says, "We want a</p> <p>15 3 year commitment on Beloit." That's the same thing you</p> <p>16 were just talking about?</p> <p>17 A Yes.</p> <p>18 Q You wanted a three-year commitment from CAT?</p> <p>19 A Right.</p> <p>20 Q And CAT -- the contract, Exhibit 44, that was ultimately</p> <p>21 entered into with CAT contained no commitment, right?</p> <p>22 A No, at that point -- at that time it did not.</p> <p>23 Q That's correct, no commitment?</p> <p>24 A Right.</p> <p>25 MR. DeGEORGE: What time is it?</p>	<p>1 for -- to do work for them, and this is a standard</p> <p>2 proposal that we -- or a proposal that we would have</p> <p>3 submitted to Caterpillar to perform the testing work for</p> <p>4 them. By the way, prepared by Jerry Vietinghoff, not by</p> <p>5 myself, so --</p> <p>6 Q Okay. By the way, have you discussed anything about</p> <p>7 this lawsuit with anybody at Caterpillar?</p> <p>8 A No.</p> <p>9 Q Do you do any business with Caterpillar?</p> <p>10 A No.</p> <p>11 Q This proposal by AVL is dated December 7, 2010, correct?</p> <p>12 A That's correct.</p> <p>13 Q And if you'll turn to page 3 --</p> <p>14 A Okay.</p> <p>15 Q -- it appears to concern testing by AVL of a 3516 marine</p> <p>16 engine, is that right?</p> <p>17 A Yes.</p> <p>18 Q And is this testing that, as you recall or if you</p> <p>19 recall, that AVL actually performed for Caterpillar at</p> <p>20 the FME plant?</p> <p>21 A You know, I know we tested four engines, I'm just not</p> <p>22 totally familiar with the total -- I mean, I can't cite</p> <p>23 the four configurations off the top of my head.</p> <p>24 Q And sticking on page 3 and subparagraph number 2, it</p> <p>25 reads, "The provided test cell will be support --" and</p>

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<p>1 this is referring to a test cell at the FME plant in 2 Beloit, Wisconsin, correct? 3 A Right, that's correct. 4 Q Okay. "The provided test cell will be supported and 5 available 24 hours a day, five days a week, at a monthly 6 rate of \$215,000," correct? 7 A Correct. 8 Q Now, hypothetically, if it turned out for whatever 9 reason that AVL could only test under this proposal one 10 shift, in other words, eight hours a day five days a 11 week rather than 24 hours a day five days a week, would 12 that have any impact on the monthly fee that Caterpillar 13 would be required to pay? 14 MR. HERRMANN: Object to form and foundation. 15 A It depends upon what caused this to not be able to run, 16 obviously. If it's a customer issue, that's one thing. 17 If it's a facility issue, that's a different thing. 18 BY MR. DeGEORGE: 19 Q Okay. Let's assume that it was not Caterpillar's 20 fault -- 21 A Right. 22 Q -- it was entirely a facility issue. 23 A Then we would have taken a look at what the causes were 24 to the customer and then we would have made a decision 25 on whether or not we would adjust the required billing</p>	<p>1 2003, that was Exhibit 45 we talked about earlier? 2 A That's correct. 3 Q All right. By the way, did you personally provide a 4 copy of Exhibit 47 to anyone at FME? 5 A No. 6 Q Did you ask anyone on your behalf to provide a copy of 7 Exhibit 47 to FME? 8 A No. 9 Q Do you know whether AVL provided copies of any proposals 10 or purchase orders between AVL and CAT to FME? 11 A No. 12 Q You don't know or they didn't? 13 A I don't know, but -- I don't know. 14 Q Okay. Would it surprise you if somebody had? 15 A Yes. 16 Q And you certainly never asked anybody to provide copies 17 of any purchase orders, schedules, proposals between CAT 18 and AVL to FME? 19 A No, because those were between Caterpillar and 20 ourselves. 21 Q Okay. 22 MR. DeGEORGE: Mark this as 48. 23 (Exhibit 48 was marked for identification.) 24 A Thank you. Okay. 25 BY MR. DeGEORGE:</p>
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<p>1 for that month. 2 Q So are you saying that if it turned out that AVL was 3 able to only test one-third of the time, one shift a day 4 rather than three, that it's possible it wouldn't have 5 made an adjustment -- and it was not CAT's fault -- 6 A Right. 7 Q -- that it's possible that AVL would not have adjusted 8 the \$215,000 a month price tag? 9 A It depends -- there's -- we would have examined that and 10 discussed it with Caterpillar, that's what we would have 11 done. I can't say for sure what we would have done 12 because it's -- there's too many variables to be able to 13 answer that. 14 Q But this proposal does -- am I correct that this 15 proposal contemplates a rate of \$215,000 a month for 16 24 hours a day, five days a week testing? 17 A Correct. 18 Q And if you'll turn to the last page, Mr. Corbin, of 19 Exhibit 47, there's an underlined sentence at the bottom 20 of page 11 which reads, "The terms and conditions 21 outlined in the Master Consulting Agreement effective 22 July 10, 2003, will apply to work undertaken under the 23 scope of this proposal," did I read that correctly? 24 A You did. 25 Q And the Master Consulting Agreement effective July 10,</p>	<p>1 Q And again, I'm just going to ask you a couple questions 2 about this, Mr. -- 3 A Sure. 4 Q -- Corbin. 5 A I don't think I need to read this entire thing. 6 Q I don't think you do, but if we get to a question -- 7 A Sure. 8 Q -- and you feel you want to. Exhibit Number 48 9 is -- appears to be -- by the way, this is a document 10 that AVL produced in this litigation. 11 A Um-hmm. 12 Q It appears to be an AVL proposal to do some engine 13 testing work for EMD, correct? 14 A Yes. 15 Q And it's dated March 3 of 2011? 16 A Correct. 17 Q And the questions I just asked you about AVL not 18 providing FME with copies of proposals and purchase 19 orders with CAT, would that -- would your answers apply 20 the same to if I were talking about EMD? 21 A Yes. 22 Q Okay. And if you'll turn to page 3 of Exhibit 48? 23 A Okay. 24 Q This indicates that the proposal would require EMD to 25 pay AVL \$200,000 per month, correct?</p>

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<p>1 A That's correct.</p> <p>2 Q And it appears from subsection 3 that this is for</p> <p>3 12 months of testing in a single bay at the FME plant in</p> <p>4 Beloit?</p> <p>5 A Correct.</p> <p>6 Q And then if you'll turn to page 5 of Exhibit 48, this</p> <p>7 indicates that -- it states, "Generally, testing will be</p> <p>8 conducted during two shift operation for five days per</p> <p>9 week (80 hours a week)," is that right?</p> <p>10 A Yes.</p> <p>11 Q And that's in exchange for the \$200,000 monthly payment?</p> <p>12 A Correct.</p> <p>13 Q And if you'll turn, Mr. Corbin, to the final page of</p> <p>14 Exhibit 48, again there's this underlined language at</p> <p>15 the end of the document that specifies that this</p> <p>16 proposal will be governed by that July 10, 2003,</p> <p>17 contract between AVL and CAT?</p> <p>18 A This document does clearly state that, yes.</p> <p>19 Q And is that your understanding?</p> <p>20 A Yes.</p> <p>21 MR. DeGEORGE: Mark this as 49.</p> <p>22 (Exhibit 49 was marked for identification.)</p> <p>23 A Thank you.</p> <p>24 BY MR. DeGEORGE:</p> <p>25 Q Mr. Corbin, you've been handed what has been marked as</p>	<p>1 thirteen -- it is fifteen lines down on the very</p> <p>2 left --</p> <p>3 A I got it, okay.</p> <p>4 Q It says "Consultant's large engine test facility in</p> <p>5 Beloit, Wisconsin." To --</p> <p>6 A Yeah, I see it.</p> <p>7 Q Would that to you refer to the FME plant in Beloit?</p> <p>8 A Yes.</p> <p>9 Q Okay. And then six lines down from that, do you see</p> <p>10 it's actually an item number 4 --</p> <p>11 A Got it.</p> <p>12 Q -- it says, "Generally, testing will be conducted during</p> <p>13 three shift operation for five days a week (120 hours a</p> <p>14 week)," is that right?</p> <p>15 A Yes.</p> <p>16 Q And in exchange for 120 hours a week of engine testing</p> <p>17 under this purchase order, CAT was agreeing to pay AVL a</p> <p>18 certain amount of money?</p> <p>19 A Correct.</p> <p>20 Q Okay. You're aware, I presume, that FME's air permit</p> <p>21 limited the amount of fuel that could be burned per</p> <p>22 month in the OP building, correct?</p> <p>23 A We became -- I became aware of that as we were already</p> <p>24 into the testing phase as to what that was, so --</p> <p>25 Q So before you were into the testing phase, nobody at AVL</p>
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<p>1 Exhibit 49, which again is a document that was produced</p> <p>2 in this litigation by AVL, and I'm just going to ask you</p> <p>3 a couple questions about it, but before that, can you</p> <p>4 take a look and tell me what this document is?</p> <p>5 A I've never seen this document before, first of all, but</p> <p>6 it appears to be a purchase order from Caterpillar to</p> <p>7 AVL North America or AVL.</p> <p>8 Q Have you seen documents like this before, purchase</p> <p>9 orders from CAT to AVL?</p> <p>10 A This is the level of detail I was never involved in.</p> <p>11 Q Okay. Who would be the best person in your judgment to</p> <p>12 talk about specifics of these purchase orders?</p> <p>13 A Jerry Vietinghoff.</p> <p>14 Q And if you'll turn to page 2 of Exhibit 49, it appears</p> <p>15 if you go about a third of the way down, it appears that</p> <p>16 the engine testing contemplated by this purchase order</p> <p>17 would be done, it says, at consultant's large engine</p> <p>18 test facility in Beloit, Wisconsin, do you see that</p> <p>19 about, oh, I don't know, fifteen lines down?</p> <p>20 A I'm trying to find that.</p> <p>21 Q Yeah, it's -- I have mine highlighted, so it's a little</p> <p>22 easier for me.</p> <p>23 A Can you just kind of generally --</p> <p>24 Q Yeah. We're on page 2 and it's one, two, three, four,</p> <p>25 five, six, seven, eight, nine, ten, eleven, twelve,</p>	<p>1 ever told you about that limitation?</p> <p>2 A Not to my knowledge.</p> <p>3 Q Okay. Throughout the -- well, let me just put</p> <p>4 bookmark -- or bookends on this.</p> <p>5 A Sure.</p> <p>6 Q From -- I'll represent to you that the Master Agreement</p> <p>7 between AVL and FME was entered into effective</p> <p>8 August 28, 2008, does that sound right?</p> <p>9 A That sounds correct, yes.</p> <p>10 Q Okay. Between August 28th, 2008, and let's say</p> <p>11 the -- December 31, 2011, did you personally ever</p> <p>12 inform -- let me step back.</p> <p>13 Between August 28th, 2008, and December 31, 2010,</p> <p>14 before all this permitting stuff --</p> <p>15 A Um-hmm.</p> <p>16 Q -- came to the surface in 2011, do you know whether</p> <p>17 anybody at AVL ever informed anybody at CAT about the</p> <p>18 fuel use limitation in the air permit, in the FME air</p> <p>19 permit?</p> <p>20 A I do not have personal knowledge of that.</p> <p>21 Q Okay. Have you -- do you have any anecdotal knowledge</p> <p>22 of that?</p> <p>23 A By --</p> <p>24 Q Did anyone ever suggest to you that AVL told CAT about</p> <p>25 that fuel limitation? I'm talking about before 2011</p>

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<p>1 now.</p> <p>2 A Yeah, before 2011. I -- it's unfair for me to guess</p> <p>3 that because I don't believe that's the case.</p> <p>4 Q Okay. Do you know whether anybody from AVL ever</p> <p>5 provided anybody at CAT with a copy of the FME air</p> <p>6 permit?</p> <p>7 A No.</p> <p>8 Q You don't know?</p> <p>9 A I -- no, I do -- I do not know, yes, sir.</p> <p>10 Q You didn't?</p> <p>11 A I did not.</p> <p>12 Q And you didn't ask anybody else to?</p> <p>13 A I did not.</p> <p>14 Q Do you know whether anybody at AVL ever provided anybody</p> <p>15 at CAT, I'm talking ever now, with a copy of the Master</p> <p>16 Agreement between AVL and FME?</p> <p>17 A No, I do not have that knowledge.</p> <p>18 Q Okay. You didn't?</p> <p>19 A I did not.</p> <p>20 Q And you didn't instruct anybody else to do so?</p> <p>21 A That's correct.</p> <p>22 Q Okay.</p> <p>23 MR. DeGEORGE: Let's mark this as 50.</p> <p>24 (Exhibit 50 was marked for identification.)</p> <p>25 BY MR. DeGEORGE:</p>	<p>1 Q All right.</p> <p>2 A I cannot remember seeing this document.</p> <p>3 Q Okay. Just to provide a little context, it appears sort</p> <p>4 of in the bottom right-hand corner of the first page, it</p> <p>5 appears to be dated July 28th, 2011.</p> <p>6 A Okay.</p> <p>7 Q And it also appears, because on the top of the first</p> <p>8 page it says "Caterpillar Confidential Yellow" and it</p> <p>9 bears the Caterpillar logo on the front, it appears to</p> <p>10 me that it was prepared by Caterpillar. I don't know</p> <p>11 that for a fact, but that --</p> <p>12 A One could surmise that. I have no knowledge that they</p> <p>13 prepared this, so --.</p> <p>14 Q And since it was produced to us by AVL, it further</p> <p>15 appears that at some point before this litigation, AVL</p> <p>16 came into possession of this document.</p> <p>17 A Okay.</p> <p>18 Q All right. Well, let me ask you a few questions about</p> <p>19 the contents of the document to see if you have any</p> <p>20 independent recollection.</p> <p>21 A Okay.</p> <p>22 Q The front page, the document is entitled Caterpillar</p> <p>23 Requirements for Further Testing at AVL's Beloit</p> <p>24 Facility.</p> <p>25 A Okay.</p>
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<p>1 Q Mr. Corbin, I've handed you what has been marked as</p> <p>2 Exhibit Number 50.</p> <p>3 A Okay.</p> <p>4 Q And I'll represent to you that this is a document that</p> <p>5 AVL produced to us in this lawsuit.</p> <p>6 A Okay.</p> <p>7 Q By the way, you may already know this, but you'll see at</p> <p>8 the bottoms of most of the documents that there's</p> <p>9 numbers, and this particular number is AVL 15443. Those</p> <p>10 are numbers that the lawyers put on the documents --</p> <p>11 A All right.</p> <p>12 Q -- they didn't appear on the original versions of the</p> <p>13 documents.</p> <p>14 A I understand.</p> <p>15 Q Okay, thank you. First of all, can you tell me whether</p> <p>16 this document looks familiar to you?</p> <p>17 A Can I look through it, please?</p> <p>18 Q Yes, please do, and then --</p> <p>19 A Right now --</p> <p>20 Q -- I'll ask you --</p> <p>21 A -- my initial --</p> <p>22 Q -- additional questions.</p> <p>23 A -- my initial feeling is no, but --</p> <p>24 Q Okay.</p> <p>25 A -- I need to look through it.</p>	<p>1 Q Now, there's a lot of documents that refer to AVL's</p> <p>2 Beloit facility, we've already looked at some of them.</p> <p>3 Would it be your understanding that whenever that sort</p> <p>4 of terminology is used, that it's referring to the FME</p> <p>5 plant in Beloit, Wisconsin?</p> <p>6 A Yes.</p> <p>7 Q AVL didn't have any other facilities in Beloit?</p> <p>8 A No.</p> <p>9 Q Okay. On page two of Exhibit 50 -- this document,</p> <p>10 again, is entitled CAT requirements for testing at the</p> <p>11 FME plant --</p> <p>12 A Sure.</p> <p>13 Q -- it indicates that CAT -- CAT's requirements included</p> <p>14 four test cells with an option for two more, so a total</p> <p>15 of six test cells, is that correct?</p> <p>16 A Yes.</p> <p>17 Q And did you have any -- or do you have any independent</p> <p>18 recollection that this is something that CAT wanted?</p> <p>19 A Well, Caterpillar had expressed to us their strong</p> <p>20 desire to be -- for us to be their testing partner in</p> <p>21 the large engines, so I'm not surprised by this document</p> <p>22 stating exactly what they felt they needed to go forward</p> <p>23 with. I mean, we had entered into a business agreement</p> <p>24 with them that they wanted to continue with us, so my</p> <p>25 guess is this -- and Jerry Vietinghoff was my</p>

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<p>1 representative inside of Caterpillar, I'm sure Jerry was</p> <p>2 the one that would have seen this, so --</p> <p>3 Q And when you say that they entered into a business</p> <p>4 agreement, are you referring to a written contract aside</p> <p>5 from the ones we've already looked at?</p> <p>6 A No.</p> <p>7 Q There's a reference that these six cells that CAT wanted</p> <p>8 at the FME plant were to be 1065 compliant. Do you know</p> <p>9 what that means?</p> <p>10 A Um-hmm. 1065 compliant means a EPA testing protocol for</p> <p>11 large engines and it -- it's a very common -- it's</p> <p>12 become now a common industry standard for testing.</p> <p>13 Q And back in 2011, in order to make a facility 1065</p> <p>14 compliant, what did that entail, do you know?</p> <p>15 A I can't give you all the details, but it has most to do</p> <p>16 with how you measure engines and the degree of accuracy</p> <p>17 that you do things with, also the air intake</p> <p>18 temperature, et cetera, et cetera. There's a whole lot</p> <p>19 of regulations that I'm not totally familiar with.</p> <p>20 Q Okay. Well, generally speaking, to the extent that</p> <p>21 making test cells at the FME plant 1065 compliant for</p> <p>22 testing of CAT's engines, to the extent that would have</p> <p>23 involved any expense to do that, whose responsibility</p> <p>24 would that expense have been?</p> <p>25 A To make them 1065 compliant?</p>	<p>1 A That's correct.</p> <p>2 Q -- at the FME plant, correct?</p> <p>3 A That's correct. Put in at our expense.</p> <p>4 Q Right. And you didn't ask FME to pay that expense, did</p> <p>5 you?</p> <p>6 A No.</p> <p>7 Q Because it was your understanding that that was AVL's</p> <p>8 responsibility?</p> <p>9 A Well, at the time we couldn't -- we couldn't take time</p> <p>10 to decide that, we had to -- we had to take care of the</p> <p>11 customer, so -- but in this particular case, I would</p> <p>12 have felt that was my cost to take -- to bear.</p> <p>13 Q The next page is entitled Air Permitting.</p> <p>14 A Right.</p> <p>15 Q And CAT states that its requirement was, "Must have</p> <p>16 valid air/fuel permitting to provide uninterrupted</p> <p>17 testing."</p> <p>18 Do you know, do you have any idea what CAT meant by</p> <p>19 uninterrupted testing?</p> <p>20 A Well, during this period of time, Caterpillar certainly</p> <p>21 became aware of the issues that we were having with the</p> <p>22 air permitting. How that happened directly, I can't</p> <p>23 tell you. So I think what they were -- what -- and this</p> <p>24 is my -- this is my interpretation, it's not a legal or</p> <p>25 other. They were saying make sure you take care of any</p>
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<p>1 Q Yes.</p> <p>2 A That would --</p> <p>3 MR. HERRMANN: Objection to the form and it calls</p> <p>4 for a legal conclusion. Go ahead.</p> <p>5 A We have done test cells to 1065 compliance inside of our</p> <p>6 testing facilities in the state of Michigan and we know</p> <p>7 exactly what it would need to do that, and we would have</p> <p>8 borne the costs, like we did on the millions of dollars</p> <p>9 that we put into the facility, to bring them 1065</p> <p>10 compliant.</p> <p>11 BY MR. DeGEORGE:</p> <p>12 Q Okay. And you're talking about the FME plant now?</p> <p>13 A Right.</p> <p>14 Q The next page states CAT's fuel requirements.</p> <p>15 A Right.</p> <p>16 Q And the first bulleted item is, "Must operate</p> <p>17 exclusively on CAT fuel."</p> <p>18 What do you recall about that subject?</p> <p>19 A Well, many companies in the area of testing have their</p> <p>20 own -- have their own line of test fuels that they use.</p> <p>21 Caterpillar is no different than other large companies.</p> <p>22 And so we were required and put in the tank to support</p> <p>23 running their test cells on their fuel.</p> <p>24 Q And that tank that you're referring to, that was an</p> <p>25 above-ground fuel storage tank --</p>	<p>1 of those issues so we don't have to go up and down.</p> <p>2 Q So was it your understanding, not necessarily just</p> <p>3 because it appears in Exhibit 50, but in the July of</p> <p>4 2011 time frame, that in order for CAT to continue</p> <p>5 having AVL testing of its engines at the FME plant in</p> <p>6 Beloit, Wisconsin, that one of CAT's requirements was to</p> <p>7 have the permit squared away so that it could have</p> <p>8 uninterrupted testing of its engines?</p> <p>9 A They needed to know that we were able to run in that</p> <p>10 facility without any interruption due to almost</p> <p>11 anything. I mean, that -- this -- air permitting is</p> <p>12 only one section of this.</p> <p>13 Q Okay. And they according to this document, CAT -- CAT's</p> <p>14 requirement for AVL was to have the facilities and</p> <p>15 permitting necessary to run between four and six engines</p> <p>16 simultaneously on an uninterrupted basis?</p> <p>17 A Yes.</p> <p>18 Q Okay. Now, if you'll turn to the next page, it's</p> <p>19 entitled Facility, are you with me?</p> <p>20 A I am.</p> <p>21 Q Okay. "Combustion air control to meet certification</p> <p>22 standards."</p> <p>23 Do you know what that refers to?</p> <p>24 A Yes.</p> <p>25 Q Okay. Tell me about that.</p>

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<p>1 A Well, in the testing of an engine to certify it, you</p> <p>2 have to have a controlled environment going into the</p> <p>3 engine both from a temperature and a humidity</p> <p>4 perspective, and they were saying in order to -- and</p> <p>5 this is part of 1065 compliance, you need to be able to</p> <p>6 have that in place.</p> <p>7 Q Okay. So this is part of the 1065 compliance we talked</p> <p>8 about earlier?</p> <p>9 A Yep, right.</p> <p>10 Q All right. And then the third bulleted item says,</p> <p>11 "Cooling capacity to support all cells."</p> <p>12 I assume when it says "all cells," it's referring</p> <p>13 to the four to six cells that we saw on the first page,</p> <p>14 right?</p> <p>15 A I would make that same assumption.</p> <p>16 Q What do you know about this cooling capacity</p> <p>17 requirement?</p> <p>18 A Well, once we got into the facility and started to test,</p> <p>19 we ran into cooling issues from a -- from a ability to</p> <p>20 handle our water break dynos, only in the summer and</p> <p>21 only at peak temperature times, so they -- we spent a</p> <p>22 lot of time and effort and our own money trying to</p> <p>23 understand how to improve the cooling and actually made</p> <p>24 suggestions on how we could do some temporary fixes to</p> <p>25 be able to get to a point where we could support all the</p>	<p>1 that in some of the other documents, I think what</p> <p>2 they're saying to us here is we need a long-term</p> <p>3 commitment with FME from you. But at this time, I</p> <p>4 didn't even know that they didn't -- FME didn't own that</p> <p>5 building, it only became to light in this time frame</p> <p>6 that that was a leased facility, so that was an</p> <p>7 interesting -- that was an interesting fact to find out</p> <p>8 at that time because this all came about at the same</p> <p>9 time.</p> <p>10 Q But in any event, CAT was, according to this document,</p> <p>11 one of their requirements was to have a minimum of a</p> <p>12 six-year commitment at the FME plant in Beloit?</p> <p>13 A That -- according to this document, that's true.</p> <p>14 Q Well, do you have any contrary recollection?</p> <p>15 A No.</p> <p>16 Q Then the next item says, "Room for aftertreatment</p> <p>17 devices (SCR catalyst is estimated at 30 feet tall for</p> <p>18 C280)."</p> <p>19 What do you know about that requirement?</p> <p>20 A That I -- I -- I can't speak to that one.</p> <p>21 Q You know nothing about that?</p> <p>22 A No.</p> <p>23 Q The second to the last page of Exhibit 50 which bears</p> <p>24 the number at the bottom right-hand corner 15449, do you</p> <p>25 see that?</p>
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<p>1 test cells simultaneously.</p> <p>2 Q And to the extent that adding cooling capacity to allow</p> <p>3 AVL to continue testing CAT engines, to the extent that</p> <p>4 would have involved an expense for AVL to do that CAT</p> <p>5 testing, who would have borne that expense?</p> <p>6 A We had not gotten to that decision between FME and</p> <p>7 ourselves. Because it also affected the fact that they</p> <p>8 were running product at the same time in there, so I</p> <p>9 don't -- I think we would have had to sit down and talk</p> <p>10 how we would ex -- if we would -- how and if we would do</p> <p>11 that expense together.</p> <p>12 Q So is it fair to say based on that answer that AVL never</p> <p>13 formally offered to incur such an expense?</p> <p>14 A We offered to put in temporary cooling at our expense.</p> <p>15 Q Right. I'm talking about long-term facility --</p> <p>16 A On a permanent fix, we never made an offer to do that.</p> <p>17 Q Okay, good. The next bulleted item says, "Minimum of</p> <p>18 6 year lease (AVL with FME)."</p> <p>19 A Correct.</p> <p>20 Q "Does AVL have control of facility?"</p> <p>21 Tell me what you remember about that requirement by</p> <p>22 CAT?</p> <p>23 A Well, again, you know, I have not seen this document,</p> <p>24 but I believe what we were talking to them about at that</p> <p>25 point, which was a long-term agreement, we talked about</p>	<p>1 A Yep.</p> <p>2 Q It says, "Business Plan. AVL to present a long term</p> <p>3 business plan to CAT management for the facility."</p> <p>4 I assume this is referring to the FME plant?</p> <p>5 A Yes.</p> <p>6 Q Do you know if AVL presented a long-term business plan</p> <p>7 to CAT management?</p> <p>8 A I do not -- I do not know that Jerry did present</p> <p>9 anything to them, but we never reached a point where we</p> <p>10 could do that.</p> <p>11 Q Okay.</p> <p>12 A I mean --</p> <p>13 Q Why not?</p> <p>14 A Because there were too many variables that we were not</p> <p>15 in control of at that point. To satisfy this document</p> <p>16 would have been not possible.</p> <p>17 Q And when you say to satisfy "this document," you're</p> <p>18 talking about --</p> <p>19 A Meaning satisfying Caterpillar's desires in this</p> <p>20 document, so --.</p> <p>21 Q And when you say "this document," you're referring to</p> <p>22 Exhibit 50?</p> <p>23 A Yes.</p> <p>24 MR. HERRMANN: Can we go off the record for just a</p> <p>25 minute?</p>

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<p>1 MR. DeGEORGE: Yeah.</p> <p>2 VIDEOGRAPHER: Off the record at 10:43 a.m.</p> <p>3 (Discussion held off the record.)</p> <p>4 VIDEOGRAPHER: Back on the record at 10:45.</p> <p>5 MR. DeGEORGE: Let's mark this as 51.</p> <p>6 (Exhibit 51 was marked for identification.)</p> <p>7 A Thank you.</p> <p>8 BY MR. DeGEORGE:</p> <p>9 Q All right, Mr. Corbin, you have been handed what has</p> <p>10 been marked as Exhibit 51.</p> <p>11 A Correct.</p> <p>12 Q Does this document look familiar to you?</p> <p>13 A May I look through it, please?</p> <p>14 Q Yes. Again, whatever you need.</p> <p>15 A Yes, this looks familiar.</p> <p>16 Q What is Exhibit 51?</p> <p>17 A This was a meeting -- this was, I believe -- I shouldn't</p> <p>18 say -- this was a meeting held between the two companies</p> <p>19 in which we were trying to figure out all of the issues</p> <p>20 that we had and how to move forward and this was a</p> <p>21 document prepared in order to kind of put the issues up</p> <p>22 in front so we could have a logical meeting.</p> <p>23 Q And this document was prepared by AVL, correct?</p> <p>24 A Yes.</p> <p>25 Q All right. And it's dated June 30, 2011?</p>	<p>1 A Well, at that time, there was -- there was discussion</p> <p>2 ongoing between FME and ourselves about should we revise</p> <p>3 the master services agreement which we had written back</p> <p>4 in 2007 or '8, I guess '8, and so Dwight from our side,</p> <p>5 he was deemed as the person to take the lead, since he</p> <p>6 had done the original contracts.</p> <p>7 Q Are you aware of anybody at AVL actually preparing and</p> <p>8 submitting to FME a new contract between the parties?</p> <p>9 A No.</p> <p>10 Q You're not aware of that happening?</p> <p>11 A I'm not aware that we had done that, no.</p> <p>12 Q Okay. You've never seen such a document?</p> <p>13 A Not that I'm aware of. Not that I remember.</p> <p>14 Q Then if you'll turn to the next page, page 5, it's</p> <p>15 entitled Permitting. Do --</p> <p>16 A Right.</p> <p>17 Q -- you see that?</p> <p>18 A Um-hmm.</p> <p>19 Q And the second bulleted item says, "AVL believes there</p> <p>20 may be an alternative route using a judicial process</p> <p>21 where AVL would accept the penalties," did I read that</p> <p>22 correctly?</p> <p>23 A You did.</p> <p>24 Q And is that this judicial process or solution that we</p> <p>25 talked about earlier that Mr. Thimke had conceived?</p>
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<p>1 A Correct.</p> <p>2 Q And if you'll turn to page 4, it's entitled</p> <p>3 Relationship - Working Teams, do you see that?</p> <p>4 A Correct.</p> <p>5 Q And then there's a sort of a chart, a three-column --</p> <p>6 A Yep.</p> <p>7 Q -- chart, and one of the items is Permitting and then in</p> <p>8 the AVL column it says, "Responsible: Maly." I assume</p> <p>9 that's -- is it Bob Maly?</p> <p>10 A Yeah, Bob Maly.</p> <p>11 Q Is it your recollection that he was the primarily</p> <p>12 responsible person at AVL at this point, June 30, 2011,</p> <p>13 in relation to permitting issues?</p> <p>14 A He was the -- he was taking the lead on our behalf at</p> <p>15 FME.</p> <p>16 Q And "Support: Thimke," T-h-i-m-k-e, that's the</p> <p>17 attorney, Mark Thimke, that AVL hired?</p> <p>18 A Correct.</p> <p>19 Q And you described earlier the reasons why AVL hired</p> <p>20 him --</p> <p>21 A Yes.</p> <p>22 Q -- do you remember that testimony?</p> <p>23 A Yep, um-hmm.</p> <p>24 Q Okay. And then the last item on this chart is</p> <p>25 "Contract." Do you know what that refers to?</p>	<p>1 A Yes.</p> <p>2 Q And then if you'll turn to the next page, 6, which is</p> <p>3 entitled Alternative Approach, and you'll recall on</p> <p>4 page 5 we just read the bulleted item that read AVL</p> <p>5 believes there may be an alternative route, and then</p> <p>6 this page is entitled Alternative Approach. Is it your</p> <p>7 understanding that this page provides a little more</p> <p>8 detail about this judicial approach?</p> <p>9 A No, I believe this is a different -- this is another</p> <p>10 alternative --</p> <p>11 Q Okay.</p> <p>12 A -- it's a second alternative.</p> <p>13 Q Tell me what this alternative involved?</p> <p>14 A This one involved breaking the facility into two permits</p> <p>15 in the facility and separating the Fairbanks Morse</p> <p>16 testing from our testing in the two-permit approach, as</p> <p>17 it says here.</p> <p>18 Q And then the third item says, "The noncompliance would</p> <p>19 be resolved by AVL taking responsibility as the, quote,</p> <p>20 operator, end quote."</p> <p>21 Tell me what you recall about that concept?</p> <p>22 A I don't think I can give you an accurate answer on that.</p> <p>23 Q Okay. But in any event, this alternative, the central</p> <p>24 feature of this alternative would have involved two air</p> <p>25 permits, correct?</p>

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<p>1 A Correct.</p> <p>2 Q And would they have been two air permits for the</p> <p>3 OP building or for the entire campus?</p> <p>4 A Well, the original -- the original one was for the</p> <p>5 entire campus and so we would have looked at how do we</p> <p>6 break our testing down, and I'm not sure if it would be</p> <p>7 that building only or in other buildings, to allow us to</p> <p>8 be able to run.</p> <p>9 Q When you say "that building only," you mean the</p> <p>10 OP building?</p> <p>11 A I'm sorry, the OP building, right.</p> <p>12 Q Okay. And if you'll turn to page 8 of Exhibit 51, which</p> <p>13 is entitled Test Cell 7 Discussion, tell me what you</p> <p>14 recall about the issues surrounding Test Cell 7?</p> <p>15 A Well, we had facilitated Test Cell 7 to run -- to run,</p> <p>16 we had taken a test cell that was basically mothballed,</p> <p>17 brought it up on our expense and got it prepared to run</p> <p>18 an engine, was doing testing in that, only to be</p> <p>19 informed by FME that we would have to turn that test</p> <p>20 cell back to them. So at that time we were trying to</p> <p>21 determine, since we had paid a significant amount of</p> <p>22 money to upgrade that cell and then FME said, "Well, now</p> <p>23 you have to pay a million dollars," so we had -- we</p> <p>24 would have had to pay another million dollars to</p> <p>25 upset -- upgrade another cell, we were trying to figure</p>	<p>1 BY MR. DeGEORGE:</p> <p>2 Q Well, evidently they had by at least June of 2011 told</p> <p>3 you that they were going to need it by the first quarter</p> <p>4 of 2012, correct?</p> <p>5 A Yeah, after we had invested -- invested a huge amount of</p> <p>6 money into that test cell.</p> <p>7 Q And at the time that money was invested by AVL, did</p> <p>8 anybody from AVL either ask FME or request a commitment</p> <p>9 from FME that AVL would have the use of that test cell</p> <p>10 for any specific period of time?</p> <p>11 A I don't have knowledge of that.</p> <p>12 Q So as far as you know, no such communication occurred?</p> <p>13 A I do not have knowledge of that communication.</p> <p>14 Q And then if you look at the next page, which is entitled</p> <p>15 Additional Specificity in the Agreement, and it reads,</p> <p>16 "AVL agrees to discuss additional specificity in the</p> <p>17 Master Agreement," what do you recall about that?</p> <p>18 A The only thing I recall is that there were -- after a</p> <p>19 period of time, of course, from the master services</p> <p>20 agreement, there were things that we both felt needed to</p> <p>21 be clarified in the master services agreement, that's</p> <p>22 the only recollection I have, that we agreed that we</p> <p>23 would sit down, look through as a team, and decide where</p> <p>24 we needed to make changes.</p> <p>25 Q Do you recall any specific changes or additional</p>
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<p>1 out how we -- how we can do that and not have an issue</p> <p>2 with our customer at that point. And so this was kind</p> <p>3 of a really difficult decision for us to how to move</p> <p>4 forward with this.</p> <p>5 Q Okay. And the first bulleted item says, "We," which is,</p> <p>6 I assume, AVL --</p> <p>7 A Right.</p> <p>8 Q -- "clearly understand the importance of assuring the</p> <p>9 PA6 engine has a test cell available and FME needs the</p> <p>10 cell by October 1 for running in Q1," I assume</p> <p>11 October 1, 2011, for running in the first quarter of</p> <p>12 2012, is that right?</p> <p>13 A That's correct. This was an acknowledgment we</p> <p>14 understood their requirements.</p> <p>15 Q Okay. And was it your understanding that FME had the</p> <p>16 right under the master services agreement to use Test</p> <p>17 Cell 7 for its purposes?</p> <p>18 MR. HERRMANN: Objection for a legal conclusion.</p> <p>19 A In the original master ser -- in the master services</p> <p>20 agreement, there was a provision in there for FME to be</p> <p>21 able to do business as -- as normal business model.</p> <p>22 Nowhere in the time frame that we were dealing with them</p> <p>23 throughout this time frame until this came up was this</p> <p>24 ever presented as a -- as a -- as an option to us that</p> <p>25 they would need this test cell.</p>	<p>1 specificity that AVL had in mind?</p> <p>2 A No.</p> <p>3 Q And then if you'll turn to page 14 of Exhibit 51, it's</p> <p>4 entitled Traditional Approach, correct?</p> <p>5 A Yes.</p> <p>6 Q And that refers to the traditional permitting approach,</p> <p>7 is that right?</p> <p>8 A That -- yes, I believe that's the case.</p> <p>9 Q Okay. And then there's a number of items listed under</p> <p>10 the traditional approach which included best available</p> <p>11 control technology, modeling, which likely requires</p> <p>12 controls, permit issuance and installation of controls.</p> <p>13 What control -- and then at the bottom</p> <p>14 it -- construction/operation issued and controls</p> <p>15 installed.</p> <p>16 What controls as best as you can remember was this</p> <p>17 referring to?</p> <p>18 A It would be there is emission controls that are put on</p> <p>19 to test cells and to buildings -- and to areas where</p> <p>20 fuel burn takes place to be able to help to eliminate</p> <p>21 NOx and particulate matter.</p> <p>22 Q And those controls cost money, right?</p> <p>23 A Yes.</p> <p>24 Q And who would have paid for those controls?</p> <p>25 A I don't believe we had ever reached an agreement on</p>

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<p>1 that.</p> <p>2 Q To the best of your recollection, did the master</p> <p>3 services agreement between FME and AVL require FME to</p> <p>4 pay for such controls?</p> <p>5 A I don't think it was implicit in the master services</p> <p>6 agreement.</p> <p>7 Q It was what?</p> <p>8 A It was not implicit in the -- in the master services</p> <p>9 agreement.</p> <p>10 Q Nor was it explicit, correct?</p> <p>11 A Right.</p> <p>12 Q And then the final page of Exhibit 51 refers to "AVL</p> <p>13 allowed to operate under court approved compliance</p> <p>14 plan."</p> <p>15 Again, is that referring to the judicial</p> <p>16 solution --</p> <p>17 A Yes.</p> <p>18 Q -- that Mr. Thimke conceived?</p> <p>19 A I'm not a hundred percent sure on that.</p> <p>20 Q Okay. Would -- does anything else come to mind as to</p> <p>21 what that may have referred to?</p> <p>22 A No.</p> <p>23 Q And then the final bulleted item says, "Settlement</p> <p>24 governs until new permit issued to AVL."</p> <p>25 Do you recall anything about that?</p>	<p>1 we were in this case, is a customer, and every time we</p> <p>2 turned the corner, we were turned away with ideas.</p> <p>3 Q Well, now this idea was basically for FME to</p> <p>4 intentionally violate its air permit, correct?</p> <p>5 A If you take it literally, yes.</p> <p>6 Q Well, if somebody would have come to AVL when you were</p> <p>7 president of AVL and proposed that AVL intentionally</p> <p>8 violate one of its environmental permits, how do you</p> <p>9 think you might have reacted to that?</p> <p>10 A Well, certainly we're not in the business to violate</p> <p>11 permits, but given the business situation that we were</p> <p>12 in, we are a very inventive company, too, we would have</p> <p>13 examined -- which if you look at this, Mark Thimke was</p> <p>14 saying that he had a relationship with the DNR,</p> <p>15 Wisconsin DNR, I think having met with George Stevens</p> <p>16 myself, I think they did not want us to leave the state</p> <p>17 of Wisconsin, so they would have been open to discussing</p> <p>18 how to do that. So don't take it literally, take it as</p> <p>19 an -- a potential avenue for us to be able to continue</p> <p>20 to do work in the state of Wisconsin.</p> <p>21 Q And what -- all right. So FME declined the idea of</p> <p>22 intentionally violating its air permit to accomplish</p> <p>23 that objective. What other ideas did AVL propose that</p> <p>24 you believe FME rejected?</p> <p>25 A Well, early on, we talked about sitting down with the</p>
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<p>1 A No.</p> <p>2 Q Okay.</p> <p>3 MR. DeGEORGE: Fifty-two.</p> <p>4 (Exhibit 52 was marked for identification.)</p> <p>5 BY MR. DeGEORGE:</p> <p>6 Q Mr. Corbin, you've been handed what has been marked as</p> <p>7 Exhibit Number 52. Can you tell us what this is?</p> <p>8 A Yeah. This was a letter written to myself from George</p> <p>9 Whittier and it was in response to Exhibit 51's meeting</p> <p>10 the day before and in which we had presented</p> <p>11 alternatives to them, and this was his response back to</p> <p>12 us.</p> <p>13 Q And is it fair to say that Mr. Whittier was reporting to</p> <p>14 you that FME had decided against pursuing the, quote,</p> <p>15 judicial solution that Mark Thimke had conceived?</p> <p>16 A Yes.</p> <p>17 Q Do you believe as you sit here today that AVL -- I'm</p> <p>18 sorry -- that FME had any sort of express or implicit</p> <p>19 obligation to pursue the judicial solution?</p> <p>20 A Not -- I don't know that they were required to -- I</p> <p>21 would not say necessarily do that, but they had -- they</p> <p>22 had a responsibility in our master services agreement to</p> <p>23 be able to provide us a permitting capability that</p> <p>24 allowed us to run and so what we were trying to do was</p> <p>25 try to be a cooperative customer, and that's really what</p>	<p>1 State of Wisconsin and trying to figure out are there</p> <p>2 other options that we could do, and they seemed to,</p> <p>3 whatever reason they -- even though we had meetings,</p> <p>4 they seemed to be very, very reluctant to look at</p> <p>5 anything other short of doing a construction -- a</p> <p>6 renewed construction permit, which leads to a new air</p> <p>7 permit.</p> <p>8 Q Right, I understand that. My question is what specific</p> <p>9 ideas did AVL bring to the table other than this</p> <p>10 judicial solution that FME declined to pursue?</p> <p>11 A I cannot recall directly, I'd have to go back and look</p> <p>12 at my notes, I just don't have that recollection.</p> <p>13 Q And when you refer to your notes, you're referring to</p> <p>14 the notes we talked about earlier --</p> <p>15 A Yeah.</p> <p>16 Q -- that you provided to your counsel?</p> <p>17 A Right.</p> <p>18 Q And those may reveal other specific ideas that AVL</p> <p>19 presented that you think FME declined?</p> <p>20 A It may. I don't know that for a fact.</p> <p>21 Q But as you sit here today, you are unable to tell me</p> <p>22 other than the judicial solution of any specific ideas</p> <p>23 that AVL brought to the table that FME rejected?</p> <p>24 A Well, I think if you look at this, there was actually</p> <p>25 two parts to that, there was a judicial solution and</p>

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<p>1 there was also a two-permit proposal. They're somewhat 2 intertwined, but they also are very separate, which is 3 why that says in here that's an alternative approach. 4 Q All right. So we have the judicial approach, which 5 would have involved a violation of the permit and 6 involvement of a court and the issuance of some sort of 7 a settlement agreement? 8 A Yeah. 9 Q And then we have the two-permit approach? 10 A Right. 11 Q Do you recall, did FME reject the two-permit approach or 12 did DNR reject the two-permit approach? 13 A FME rejected both of those approaches. 14 Q Okay. And do you recall whether FME offered an 15 explanation as to why it wasn't interested in the 16 two-permit approach? 17 A There was a reason, but quite honestly, I don't think I 18 have a total recollection of that, so -- 19 Q Would that possibly be reflected in your notes? 20 A I don't -- I don't think so. 21 Q Okay. All right. So we have the judicial solution and 22 the two-permit approach. 23 A Right. 24 Q As you sit here today, can you recall any other ideas, 25 permitting ideas, that FM -- that AVL brought to the</p>	<p>1 FME had that AVL really appreciated? 2 A No. 3 Q And then the first bulleted item says, "AVL will not 4 pursue the quote, Judicial, end quote, permitting 5 approach." 6 That's the same thing we've been talking about, 7 right? 8 A That's correct. 9 Q And the next bulleted item says, "FME and AVL will 10 work together on the 'Traditional' permitting approach 11 with the intent of getting necessary changes in 12 permitting for the OP building as quickly as possible 13 (3 to 4 months)," did I read that correctly? 14 A You did. 15 Q So at this point, at least as far as Mr. Ricker appears 16 to have been concerned, July 15, 2011, FME and AVL were 17 continuing to work together on the traditional 18 permitting approach, correct? 19 A That appears to be correct, yes. 20 Q And then it says, "FME will allow Mark Thimke to work 21 with FME and AVL on the permitting process," right? 22 A Um-hmm. 23 Q And is it your understanding that when AVL hired 24 Mr. Thimke, it asked for and received from FME a waiver 25 of the conflict of interest created by the fact that</p>
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<p>1 table that FME rejected? 2 A Not as I sit here today. 3 Q Okay. 4 MR. DeGEORGE: Mark this 52. 5 COURT REPORTER: Fifty-three. 6 MR. DeGEORGE: Fifty-three? We're going faster 7 than I thought. 8 (Exhibit 53 was marked for identification.) 9 BY MR. DeGEORGE: 10 Q Mr. Corbin, you've been handed what has been marked as 11 Exhibit 53, and I'll acknowledge that this is an email 12 that you neither authored nor apparently received at the 13 time, it was authored by Mr. Ricker, but having said 14 that, does this look familiar to you? 15 A I don't believe I've seen this document. 16 Q Okay. Well, I'll ask Mr. Ricker about it later today, 17 but I do have a few questions just to see if you have an 18 independent recollection. The email, it goes from 19 Mr. Ricker to Mr. John Bortorff, B-o-t-t-o-r-f-f, and 20 it's dated July 15, 2011, and it begins, "John. This 21 email is a very quick summary of some key items we 22 discussed both Wednesday and yesterday regarding the, 23 quote, Traditional, end quote, permitting process by 24 FME. We really appreciate your suggestions." 25 Do you have any recollection of what suggestions</p>	<p>1 Mr. Thimke had previously done work for FME, do you 2 recall that? 3 A Yes. 4 Q Okay. So FME agreed to waive that conflict -- 5 A That's correct. 6 Q -- in order to help this process along? 7 A That is true. 8 Q And then if you'll go down to near the bottom, there's a 9 paragraph that begins with the word "Finally," do you 10 see that? 11 A Yep. 12 Q It says, "Finally, AVL appreciates the opportunity FME 13 has provided to consider the Assembly Building for AVL 14 testing," did I read that correctly? 15 A Yes, you did. 16 Q What is the assembly building? 17 A It's where they assemble their engines for their 18 production engines. 19 Q You're talking about -- 20 A FME. 21 Q -- FME? 22 A Yeah. 23 Q In this -- in this sentence, Mr. Ricker is expressing 24 AVL's appreciation that FME would consider the 25 possibility of allowing AVL to do some work in the</p>

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<p>1 assembly building?</p> <p>2 A That's correct.</p> <p>3 Q Did you -- have you heard that building sometimes</p> <p>4 referred to as the large engine building?</p> <p>5 A Yes.</p> <p>6 Q So if I use the term "large engine building," we'll be</p> <p>7 talking about the same thing?</p> <p>8 A Yes.</p> <p>9 Q All right. So was it your understanding in July of 2011</p> <p>10 that in order for AVL to do engine testing in the large</p> <p>11 engine building, it required FME's approval?</p> <p>12 MR. HERRMANN: Object to the extent it calls for a</p> <p>13 legal conclusion.</p> <p>14 A Well, of course it needed it, I can't just go move an</p> <p>15 engine in there.</p> <p>16 BY MR. DeGEORGE:</p> <p>17 Q Okay. Well, I guess I'll ask it more specifically.</p> <p>18 Under the master services agreement, did AVL have</p> <p>19 an express right to test engines in the large engine</p> <p>20 building?</p> <p>21 MR. HERRMANN: Same objection.</p> <p>22 A In the master services agreement, it is not specific as</p> <p>23 to which building that we would do testing, so our</p> <p>24 assumption was we would do testing on the Fairbanks</p> <p>25 Morse campus.</p>	<p>1 contractual right to test engines in the large engine</p> <p>2 building?</p> <p>3 A I don't believe there was ever any documentation</p> <p>4 to -- to that -- to that effect.</p> <p>5 Q And what about orally, do you know -- are you aware of</p> <p>6 anybody from AVL ever saying to anybody from FME, "Hey,</p> <p>7 we have a right under the master services agreement to</p> <p>8 use the large engine building"?</p> <p>9 A Not that I'm personally aware of.</p> <p>10 VIDEOGRAPHER: Five minutes left on these DVDs.</p> <p>11 MR. DeGEORGE: Well, let's see if we can get</p> <p>12 through one more and then we'll -- this is 54.</p> <p>13 (Exhibit 54 was marked for identification.)</p> <p>14 BY MR. DeGEORGE:</p> <p>15 Q Mr. Corbin, you've been handed what has been marked as</p> <p>16 Exhibit 54.</p> <p>17 A Right.</p> <p>18 Q Can you tell us what this is?</p> <p>19 A This is a series of communications between George</p> <p>20 Whittier and myself prior to the June 30th meeting which</p> <p>21 we looked at one of the exhibits from.</p> <p>22 Q Okay. And Mr. -- one of the emails is an email that</p> <p>23 Mr. Whittier sent to you on June 29th at 8:54 a.m.,</p> <p>24 correct? The middle one?</p> <p>25 A Yes.</p>
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<p>1 BY MR. DeGEORGE:</p> <p>2 Q That was your assumption when?</p> <p>3 A At the beginning of the -- in the master services</p> <p>4 agreement.</p> <p>5 Q Are you aware of a single document that ever said that?</p> <p>6 A Not that I'm aware of.</p> <p>7 Q Was it your understanding when the master services</p> <p>8 agreement was entered into that FM -- that AVL would be</p> <p>9 allowed to test in every building on the campus?</p> <p>10 A We were -- at that time were focused on the OP building.</p> <p>11 Q Right.</p> <p>12 A We were focused on that building.</p> <p>13 Q Yeah, and that wasn't my question.</p> <p>14 My question is when the master services agreement</p> <p>15 was signed in August of 2008, was it AVL's understanding</p> <p>16 that it would be entitled to conduct engine testing in</p> <p>17 any or all of the buildings at the FME campus in Beloit,</p> <p>18 Wisconsin?</p> <p>19 A It was not implicit in the contract, I would agree with</p> <p>20 that.</p> <p>21 Q Nor was it explicit?</p> <p>22 A Right, nor was it explicit.</p> <p>23 Q And just so we're clear on the record, are you aware of</p> <p>24 any written or oral communication ever communicated by</p> <p>25 AVL to FME expressing the view that AVL had the</p>	<p>1 Q Okay.</p> <p>2 A I'm sorry, I got confused.</p> <p>3 Q And Mr. Whittier's email to you says, among other</p> <p>4 things, "We intend to talk about the air permit stack</p> <p>5 and fuel limitations and make sure AVL is aware of the</p> <p>6 very limited nature of testing that can be supported</p> <p>7 through the rest of this year," did I read that</p> <p>8 correctly?</p> <p>9 A Yes.</p> <p>10 Q Do you recall what Mr. Whittier was referring to about</p> <p>11 the fuel limitation and the limited nature of testing</p> <p>12 that can be supported through the end of 2011?</p> <p>13 A Yes.</p> <p>14 Q What was that?</p> <p>15 A Well, there was a fuel burn requirement for the facility</p> <p>16 on a rolling basis, on a monthly rolling basis, and so</p> <p>17 because we had been the only person testing in that</p> <p>18 building which had been going on for a period of time,</p> <p>19 suddenly they show up with engines inside the facility</p> <p>20 and no longer is the fuel burn sufficient to handle all</p> <p>21 of our testing, that's what it referred to.</p> <p>22 Q And am I correct that FME had the right to test engines</p> <p>23 in the OP building under the master services agreement?</p> <p>24 A They also -- the answer would be, you know, they</p> <p>25 had -- in the contract it stated that, that's true.</p>

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<p>1 Q Okay.</p> <p>2 A But they also had an obligation to us to be able to</p> <p>3 provide us with our testing needs, also, in my opinion.</p> <p>4 Q And does the master services agreement say that</p> <p>5 explicitly?</p> <p>6 MR. HERRMANN: Object to the extent it calls for a</p> <p>7 legal conclusion.</p> <p>8 A Yeah, that's a legal -- that's a legal -- I'm not going</p> <p>9 to comment on that.</p> <p>10 BY MR. DeGEORGE:</p> <p>11 Q You just don't know?</p> <p>12 A I'm not going to comment because I think it calls to</p> <p>13 interpretation of a document that I'm not legally</p> <p>14 capable of making that determination.</p> <p>15 Q Well, I mean, I'll tell you, and your attorney will</p> <p>16 correct me if I'm wrong, but if a contract is unclear,</p> <p>17 one of the pieces of evidence that a Court will consider</p> <p>18 is what the intent of the parties was when they entered</p> <p>19 into the contract.</p> <p>20 A So let me answer it this way. When we entered into that</p> <p>21 contract together, when I walked out to the OP building,</p> <p>22 there was nothing in that building testing. The</p> <p>23 building had broken windows, it had nothing in the</p> <p>24 building. When we asked them at that time, "What do you</p> <p>25 foresee is your needs?" a dialogue had taken place that</p>	<p>1 that were contained in that permit, is that correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. And the fuel limitation was independent of the</p> <p>4 stack issue in the sense that no matter how many</p> <p>5 stacks there were available to FME and AVL in the</p> <p>6 OP building, if there was a hundred stacks, it didn't</p> <p>7 matter, it didn't have any impact on the fuel</p> <p>8 limitation, correct?</p> <p>9 A As long as they were permitted, that's correct.</p> <p>10 Q Right. So the 30,333-gallon-per-month rolling average</p> <p>11 fuel limitation in the permit applied irrespective of</p> <p>12 how many permitted stacks there were?</p> <p>13 A That's my -- I believe that to be true, yes.</p> <p>14 Q Okay. Let's go to -- Mr. Corbin, this was previously</p> <p>15 marked as Exhibit 17.</p> <p>16 A Okay.</p> <p>17 Q And I'm just going to have a couple questions about</p> <p>18 this --</p> <p>19 A Sure.</p> <p>20 Q -- and as I ask them, you may need to spend a minute</p> <p>21 getting context. First of all, I'll represent to you</p> <p>22 that this document was produced to us by AVL. It's</p> <p>23 entitled Multiple Large Engine Test Cells, Update on</p> <p>24 Current Concerns, and it's dated June 14, 2011.</p> <p>25 Does this document look familiar to you?</p>
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<p>1 said, "We haven't used this building in years, we are</p> <p>2 glad to be able to utilize it." So that's why we</p> <p>3 entered into this contract.</p> <p>4 Q Did somebody from FME ever tell you or anybody else to</p> <p>5 your knowledge at AVL that FME did not have any plans to</p> <p>6 ever do any more testing in the OP building?</p> <p>7 A Not that I'm aware of.</p> <p>8 MR. DeGEORGE: Okay. Why don't we take a break</p> <p>9 because it will take more than a few minutes to finish</p> <p>10 this document.</p> <p>11 VIDEOGRAPHER: This is the end of media number one</p> <p>12 in the deposition of Mr. Ray Corbin. We're going off</p> <p>13 the record at 11:16 a.m.</p> <p>14 (Short recess.)</p> <p>15 VIDEOGRAPHER: This is the beginning of media</p> <p>16 number two in the continuing deposition of Mr. Ray</p> <p>17 Corbin. We're back on the record at 11:25.</p> <p>18 BY MR. DeGEORGE:</p> <p>19 Q All right, Mr. Corbin, let's just finish up Exhibit 54,</p> <p>20 I just want to ask you one more question.</p> <p>21 A Sure.</p> <p>22 Q There's a reference which we talked about a little</p> <p>23 earlier to permit stack and fuel limitations. Those</p> <p>24 were two separate limitations that -- we're talking</p> <p>25 about the FME air permit and these were two limitations</p>	<p>1 A It does not.</p> <p>2 Q Okay. Then I'll just ask you if you have any</p> <p>3 recollection of some of the subjects that are discussed</p> <p>4 in this document. On the third page, the first bulleted</p> <p>5 item reads, "Have learned that we will be hitting the</p> <p>6 existing air permitting limit in the end of August/early</p> <p>7 September time frame." And I presume this is referring</p> <p>8 to end of August, early September 2011, correct?</p> <p>9 MR. HERRMANN: Object to foundation.</p> <p>10 A I can't -- I can't comment, I suppose.</p> <p>11 BY MR. DeGEORGE:</p> <p>12 Q Well, would you have any reason to believe that it was</p> <p>13 referring to another year?</p> <p>14 A No.</p> <p>15 Q I'm sorry?</p> <p>16 A No.</p> <p>17 Q Okay. Was it your understanding that in the summer of</p> <p>18 2011, that there were indications that the fuel</p> <p>19 limitation contained in the FME air permit was going to</p> <p>20 be hit later that year?</p> <p>21 A Yes.</p> <p>22 Q Okay. And then directly beneath that bulleted item is a</p> <p>23 sub-item which reads "Combined AVL/FME."</p> <p>24 A Correct.</p> <p>25 Q So again, I know you haven't seen this document before</p>

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<p>1 or don't recall this document, but would that indicate</p> <p>2 to you that what this is referring to is the amount of</p> <p>3 fuel that was being used combined by AVL and FME?</p> <p>4 A Yes.</p> <p>5 Q Okay. Then on the next -- page 4 is entitled</p> <p>6 Aftertreatment. And the third bulleted item says,</p> <p>7 "If required, AVL may need a price adjustment of between</p> <p>8 \$10,000 and \$20,000 per cell for the next 5 years."</p> <p>9 Do you have any recollection of what that referred</p> <p>10 to?</p> <p>11 A I think -- no, I can't -- I can't comment to that</p> <p>12 bullet.</p> <p>13 Q So you have no --</p> <p>14 A I can't --</p> <p>15 Q -- no idea what that referred to?</p> <p>16 A I do not know what this document was trying to convey to</p> <p>17 Caterpillar in this particular instance.</p> <p>18 Q Do you recall the subject coming up with CAT about</p> <p>19 whether CAT would be asked -- well, first of all, do you</p> <p>20 recall the subject coming up internally at AVL about the</p> <p>21 possibility of asking Caterpillar to in some fashion</p> <p>22 help finance any capital improvements that would be</p> <p>23 necessary at the FME plant?</p> <p>24 A We did indeed have an internal discussion, but realized</p> <p>25 that that is not something that we could ask our</p>	<p>1 and he is with CAT, yes.</p> <p>2 Q The other people listed there, they're not with AVL,</p> <p>3 right?</p> <p>4 A They're not with AVL.</p> <p>5 Q And to your knowledge, they were not with FME?</p> <p>6 A I believe that to be true, yes.</p> <p>7 Q And the four items are: Run the C175 for one or two</p> <p>8 more days, remove engine. Two, once the C175 is</p> <p>9 finished, run the 3516 for about a week, remove engine.</p> <p>10 Three, return the C175 engine to CAT. And four, run the</p> <p>11 C280 program to completion, remove engine.</p> <p>12 Tell me what you remember about that current plan?</p> <p>13 A Well, at this time, in during this period of time,</p> <p>14 Caterpillar -- we had informed Caterpillar of our</p> <p>15 inability to test because of the fuel limits and this</p> <p>16 was a plan to get them engines back to their facility,</p> <p>17 so we were in the process of not being able to fulfill</p> <p>18 our contractual agreements with them.</p> <p>19 Q So when you informed Caterpillar about the fuel</p> <p>20 limitation that was impeding your ability to test their</p> <p>21 engines, what was Caterpillar's reaction, did they say,</p> <p>22 "Well, then we're going to pull our engines"?</p> <p>23 A First they tried -- you know, I think we've seen</p> <p>24 documentation where we tried to explain to them the</p> <p>25 situation so they understood it and then I think there</p>
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<p>1 customer to bear the cost for.</p> <p>2 MR. DeGEORGE: This is 55.</p> <p>3 (Exhibit 55 was marked for identification.)</p> <p>4 A Thank you.</p> <p>5 BY MR. DeGEORGE:</p> <p>6 Q Mr. Corbin, you've been handed what has been marked</p> <p>7 Exhibit Number 55 and it consists of two emails. The</p> <p>8 one I want to ask you a few questions about is Robert</p> <p>9 Maly's email to you and others dated June 28, 2011, at</p> <p>10 12:19 p.m., are you with me?</p> <p>11 A Yep.</p> <p>12 Q Okay. And the subject is "Large Engine Testing</p> <p>13 Overview - Beloit."</p> <p>14 A Okay.</p> <p>15 Q Okay? There's a section of the email that says "Current</p> <p>16 Plan" and it indicates that Mr. Maly met with Tim</p> <p>17 Meyers, M-e-y-e-r-s, Greg Hudson, H-u-d-s-o-n, Jonathan</p> <p>18 Kilkenny, K-i-l-k-e-n-n-y, Blake Smith, and Swapnil,</p> <p>19 S-w-a-p-n-i-l, Padate, P-a-d-a-t-e, my apologies for</p> <p>20 mispronouncing that, "yesterday afternoon to explain our</p> <p>21 situation here in Beloit and laid out the following</p> <p>22 plan."</p> <p>23 Are those people that I just mentioned, are those</p> <p>24 people with CAT or EMD?</p> <p>25 A The only name that I'm familiar there is with Swapnil</p>	<p>1 was nothing that we could present to them as a valid</p> <p>2 plan at this point that would get us to be able to test</p> <p>3 into the fall time frame, which was important to them.</p> <p>4 So I think they were very, very upset with us that we</p> <p>5 could not meet their testing requirements because we had</p> <p>6 invested and they had invested a lot of money in that</p> <p>7 facility at that point.</p> <p>8 Q What if you -- let me ask it this way.</p> <p>9 Do you know whether AVL made a proposal to CAT to</p> <p>10 the effect that we're unable to meet all your</p> <p>11 requirements, but what about testing two engines on a</p> <p>12 part-time basis, did anything like that ever come up</p> <p>13 with CAT, sort of a scaled-back testing program?</p> <p>14 A We discussed with them, although I was not personally</p> <p>15 involved, I know Jerry Vietinghoff discussed with them</p> <p>16 alternatives to shorter test cycles, other things, and</p> <p>17 you have to understand the nature of engine testing, it</p> <p>18 isn't something where you can just turn it on and turn</p> <p>19 it off, you have -- when you do it, you have to start a</p> <p>20 test in a series of tests to be able to get the</p> <p>21 calibration done, so it doesn't lend itself to, oh, I've</p> <p>22 got 100 gallons of fuel today I'll go burn. So that's</p> <p>23 where Caterpillar basically looked at these things with</p> <p>24 us, but I think their exit plan was such that they had</p> <p>25 to take care of them self.</p>

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<p>1 Q So it was Caterpillar's decision that under the 2 circumstances, it needed to find some place else to have 3 its engines tested?</p> <p>4 A Yes.</p> <p>5 THE WITNESS: It got cooler suddenly, didn't it? 6 MR. DeGEORGE: Mark this as 56. 7 (Exhibit 56 was marked for identification.)</p> <p>8 BY MR. DeGEORGE:</p> <p>9 Q Mr. Corbin, I know that you left AVL effective 10 December 31, 2011, correct?</p> <p>11 A That's correct.</p> <p>12 Q All right. Before or after you left, do you know -- do 13 you know what a litigation hold is?</p> <p>14 A Do not.</p> <p>15 Q Okay. Sometimes when parties find themselves facing a 16 legal disagreement, the lawyers for the parties tell 17 everybody who is involved to hold on to all your 18 records, don't delete emails, don't throw anything away 19 related to this dispute. Do you recall any such 20 communication?</p> <p>21 A Yes.</p> <p>22 Q Okay. Tell me about that?</p> <p>23 A I --</p> <p>24 MR. HERRMANN: Well, let me just place an objection 25 to the extent we may be talking about attorney/client</p>	<p>1 anything I can add to that one.</p> <p>2 MR. DeGEORGE: Fifty-six. We'll mark this as 57. 3 (Exhibit 57 was marked for identification.)</p> <p>4 BY MR. DeGEORGE:</p> <p>5 Q I'm just going to have a couple question 6 about -- questions --</p> <p>7 A Sure.</p> <p>8 Q -- about 57. First of all, do you recall seeing this 9 document before?</p> <p>10 A I can't say that I remember seeing this document.</p> <p>11 Q Okay. Well, let me ask you a couple questions just to 12 see if you have any recollection independently of a 13 couple things that are mentioned --</p> <p>14 A Okay.</p> <p>15 Q -- in it. Page 2 of Exhibit 57 --</p> <p>16 A Okay.</p> <p>17 Q -- the fourth and fifth bulleted items refer to FME 18 agreeing to allow Mark Thimke to work collaboratively 19 with Dan Guido at ERM to explore all possible approaches 20 that would allow -- well, all possible ways to expedite 21 the process and then all possible approaches that would 22 allow AVL to start running as soon as possible after the 23 permit is issued.</p> <p>24 Is it your recollection that FME had indeed agreed 25 to allow its attorney, Mark Thimke, to work</p>
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<p>1 communications. I have --</p> <p>2 THE WITNESS: Yeah.</p> <p>3 MR. HERRMANN: -- no issues with you describing 4 what you were informed to do --</p> <p>5 THE WITNESS: Right.</p> <p>6 MR. HERRMANN: -- just as long as it's not a more 7 extensive conversation --</p> <p>8 THE WITNESS: No.</p> <p>9 MR. HERRMANN: -- but go ahead.</p> <p>10 A You described what we were -- what I was -- we were 11 all -- I was asked do not destroy anything to do 12 with -- anything to do with Fairbanks Morse.</p> <p>13 BY MR. DeGEORGE:</p> <p>14 Q Okay, good. Thank you. Do you know whether that was in 15 writing or did someone just tell you that orally?</p> <p>16 A You know, I don't remember, I --</p> <p>17 Q Okay.</p> <p>18 A I don't remember.</p> <p>19 Q And you held on to all your notes and the other things 20 you've described?</p> <p>21 A Yes.</p> <p>22 Q And eventually turned them over to your counsel?</p> <p>23 A That's correct.</p> <p>24 Q Okay. I'll just ask Mr. Ricker about these --</p> <p>25 A I was saying going to say, yeah, I don't think there's</p>	<p>1 collaboratively with FME's environmental consultant, Dan 2 Guido, to try to figure out what to do?</p> <p>3 A Yes.</p> <p>4 Q On page 4, Mr. Corbin, of Exhibit 57 --</p> <p>5 A Okay.</p> <p>6 Q -- the first bulleted item indicates -- states, "AVL to 7 confirm scenario to be modeled" and then it talks about 8 some specifics, and the second bulleted item says, "AVL 9 to provide all detailed parameters required for modeling 10 to Dan Guido at ERM."</p> <p>11 To your knowledge, did AVL ever provide these 12 details to Mr. Guido?</p> <p>13 A Yes.</p> <p>14 Q You think it did?</p> <p>15 A Yes.</p> <p>16 Q And who provided that?</p> <p>17 A Oh, God. There was an engineer on site that provided 18 that information and he provided it to -- to an engineer 19 at -- at FME, so --.</p> <p>20 Q If you'll turn to the last page --</p> <p>21 A Sure.</p> <p>22 Q -- Mr. Corbin, of Exhibit 57 which is entitled Get Up 23 and Running ASAP, and the first item on the left column, 24 Activity, "Accelerate the permitting process." And then 25 the Status says, "Hansell," H-a-n-s-e-l-l, "driving</p>

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<p>1 efforts of FME/AVL team to move as fast as possible.</p> <p>2 Getting good cooperation from FME/ERM," did I read that</p> <p>3 correctly?</p> <p>4 A Yes.</p> <p>5 Q Do you disagree with this statement?</p> <p>6 A No. Only to the extent, though, that we were placed in</p> <p>7 a significant problem, so he saw this as at least we</p> <p>8 were trying to get cooperative -- a cooperative manner</p> <p>9 moving forward, so I don't --</p> <p>10 Q And you were getting cooperation, correct, from FME and</p> <p>11 ERM?</p> <p>12 A In my opinion, no.</p> <p>13 Q Okay. Do you know who authored Exhibit 57?</p> <p>14 A I do not.</p> <p>15 Q Well, it appears somebody at AVL --</p> <p>16 A Yeah, it appears to be somebody at AVL, I agree.</p> <p>17 Q -- thought that good cooperation was being provided by</p> <p>18 FME and ERM?</p> <p>19 A Right.</p> <p>20 Q Okay. Did you have any -- did you personally have any</p> <p>21 direct dealings with ERM?</p> <p>22 A I was in meetings where he was part of the -- part of</p> <p>23 the meetings, yeah.</p> <p>24 Q "He" being Dan Guido?</p> <p>25 A Dan Guido, yes.</p>	<p>1 and that to me really bothered me because wasn't I a</p> <p>2 customer also? And it was very evident even though they</p> <p>3 were being cooperative, their number one goal was to</p> <p>4 take care of themselves in this process.</p> <p>5 Q And what was your number one goal?</p> <p>6 A My number one goal was to take care of my customer,</p> <p>7 obviously.</p> <p>8 Q Okay, good. Fair enough. Your customer being CAT?</p> <p>9 A Correct. Well, and the owner of our company because we</p> <p>10 had put a significant amount of money into that</p> <p>11 facility.</p> <p>12 MR. DeGEORGE: What is this, 58 we're up to? I'm</p> <p>13 sorry, I marked 58 on your copy.</p> <p>14 (Exhibit 58 was marked for identification.)</p> <p>15 MR. HERRMANN: This is 58, though, correct?</p> <p>16 MR. DeGEORGE: Yeah, it is 58.</p> <p>17 BY MR. DeGEORGE:</p> <p>18 Q All right, let's talk about the contract. This is the</p> <p>19 Master Agreement between AVL and FME --</p> <p>20 A Yes.</p> <p>21 Q -- effective August 28, 2008?</p> <p>22 A That's correct.</p> <p>23 Q Correct. And this is a document you reviewed as</p> <p>24 recently as yesterday, correct?</p> <p>25 A Yes.</p>
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<p>1 Q And was it ever your impression that he was</p> <p>2 uncooperative?</p> <p>3 A Never uncooperative.</p> <p>4 Q Okay. You'll be handed what has been previously</p> <p>5 marked as Exhibit 26. Exhibit 26 appears to be an email</p> <p>6 from Mr. Vietinghoff, V-i-e-t-i-n-g-h-o-f-f, to</p> <p>7 Mr. DiCaro, D-i-C-a-r-o, dated July 28, 2011, and just</p> <p>8 generally speaking, and I know that this is not an email</p> <p>9 that you authored or was sent to you at the time, but</p> <p>10 generally speaking, as of July 28, 2011, was it your</p> <p>11 understanding that AVL and FME and their respective</p> <p>12 representatives continued to work together to solve</p> <p>13 these problems?</p> <p>14 A I think there was a cooperative -- a cooperative</p> <p>15 environment, but not producing results.</p> <p>16 Q But the effort was ongoing?</p> <p>17 A Yeah, I think the documentation would relay that we were</p> <p>18 all trying to work together at this point.</p> <p>19 Q Okay, thank you.</p> <p>20 A Can I add something to that last statement?</p> <p>21 Q Absolutely.</p> <p>22 A So in a meeting that I sat across the table from George</p> <p>23 Whittier at, he made it extremely clear to me that his</p> <p>24 number one priority was to take care of his customer,</p> <p>25 which was the engine testing that was going on in there,</p>	<p>1 Q Okay. And you may have already answered this question,</p> <p>2 but tell us what your role was in the negotiations</p> <p>3 leading up to the Master Agreement?</p> <p>4 A The negotiations for this Master Agreement were mainly</p> <p>5 hand -- were handled between -- was mainly handled by</p> <p>6 Dwight Hansell and I did not get involved in the -- in</p> <p>7 great detail of this agreement.</p> <p>8 Q And is it your view that Mr. Hansell did a pretty crummy</p> <p>9 job in negotiating the terms of this agreement?</p> <p>10 A I think in -- if we look backwards, which is always easy</p> <p>11 to do, one could construe that both parties needed to</p> <p>12 have done maybe more due diligence than was done.</p> <p>13 Q Okay.</p> <p>14 A But, you know, that's hindsight, you can't --</p> <p>15 Q Right. Well, with the benefit of hindsight, what, if</p> <p>16 anything, would you have had Mr. Hansell do differently</p> <p>17 in negotiating this contract?</p> <p>18 A Well, obviously, the things that we found along the</p> <p>19 process we probably would have done a deeper due</p> <p>20 diligence on. I mean, that's easy to say, you know,</p> <p>21 it's easy to look at what went wrong and say I would</p> <p>22 have done a better job on that, so --.</p> <p>23 Q Well, whose responsibility was it, if you know, at</p> <p>24 AVL -- you used the term "due diligence." I would</p> <p>25 presume that one piece of the due diligence would be to</p>

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<p>1 review the air permit for the --</p> <p>2 A Right.</p> <p>3 Q -- facility? Correct?</p> <p>4 A Correct.</p> <p>5 Q That would be pretty basic, wouldn't it?</p> <p>6 A Right.</p> <p>7 Q Okay. Whose responsibility was it to review the FME air permit before the Master Agreement was signed?</p> <p>8 A That would have been done through Mike Golda's organization, Operations.</p> <p>9 Q So Mike Golda would be the right person to ask about that aspect of the due diligence?</p> <p>10 A Yes.</p> <p>11 Q Okay. Did Mr. Golda or anybody else at AVL ever submit to you any sort of written or oral report about the contents of the FME air permit and how they may relate to this relationship?</p> <p>12 A No.</p> <p>13 Q Okay. So I think you testified that Mr. Hansell was primarily responsible --</p> <p>14 A Correct.</p> <p>15 Q -- for negotiating the terms of this Master Agreement.</p> <p>16 Just summarize for me what, if any, role you played as the terms were being negotiated?</p> <p>17 A My main role was I went out to see the facility</p>	<p>1 we went over in the winter of like in December, I</p> <p>2 believe it was, to review and -- and the person that we</p> <p>3 met with was Tony Gioffedi.</p> <p>4 Q And was it your understanding when you made that visit, I know we're talking about now many months before the agreement was signed --</p> <p>5 A Right.</p> <p>6 Q -- but was it your understanding at that time when you saw the large engine building that you would be testing engines in that building, as well?</p> <p>7 A There was -- there was no reason to believe we couldn't at that point, there was nobody that said you can't test in this building. So even though we were looking at the OP building as our primary building, there was never anything construed that would say you're excluded from these facilities.</p> <p>8 Q Did you ever ask?</p> <p>9 A No, to be honest, did not ask.</p> <p>10 Q So you never said, "Are we going to be allowed to test in this really nice building?"</p> <p>11 A No, not that I -- I did not ask those questions. There could have been other people within the organization that asked that. I did not ask that --</p> <p>12 Q Did anybody --</p> <p>13 A -- question.</p>
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<p>1 firsthand to understand what we were signing up to do, what FME was offering us, so that I could understand at least physically what they were offering to us. Because I had never been to Fairbanks Morse before, so my main -- main thing was looking at facilities trying to understand costs, you know, understand what it would take to upgrade this facility that when I went to, I went -- it was really a pretty bad facility, you know, and so we had to sit down and make a decision do we want to invest significantly into a building like this. It had bones, what I call bones, but it needed a lot of infrastructure fixed.</p> <p>2 Q You're referring to the OP building?</p> <p>3 A Yeah, the OP building. And we did walk and we did have the opportunity to tour the other test cells on the facility in the --</p> <p>4 Q You're talking about the large engine building?</p> <p>5 A Yeah, the large engine building, we were able -- they were very -- they did take us through the entire building and showed us where -- the entire campus and showed us where they were testing.</p> <p>6 Q And when you -- roughly when was it that you did this visit?</p> <p>7 A It would have been in -- let's see, we signed this in August. That would have been in the winter before that,</p>	<p>1 Q -- at FME ever say, "Hey, we're going to let you test in this building, as well," before the agreement was signed?</p> <p>2 A No, but they never said to me you couldn't test in there either, so --</p> <p>3 Q Right. Okay. So you visited the facility in the winter --</p> <p>4 A Right.</p> <p>5 Q -- before the agreement was signed, months before.</p> <p>6 A Right.</p> <p>7 Q So then at some point the parties started exchanging drafts of the Master Agreement?</p> <p>8 A Correct, that's --</p> <p>9 Q All right. What role did you play in that process?</p> <p>10 A I was very -- a very limited role at that point.</p> <p>11 Q By the way, did you ever ask anybody, Mr. Golda or anybody else, to give you a report or a summary of the FME air permit before the contract was signed?</p> <p>12 A I did not.</p> <p>13 Q Was Mr. Golda fired?</p> <p>14 A Mr. Golda, I was not involved in his termination, so I can't speak to that.</p> <p>15 Q That was before you left, right?</p> <p>16 A Yeah. There was a period of time when I was off ill, I had major surgery, and during that period of time his</p>

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<p>1 termination took place.</p> <p>2 Q Okay. Do you have any understanding as to why he was</p> <p>3 terminated?</p> <p>4 A I do not have firsthand knowledge.</p> <p>5 Q Do you have secondhand knowledge?</p> <p>6 A No.</p> <p>7 Q So you have no idea at all why he might have been fired?</p> <p>8 A I did not sign any of his termination papers, nor</p> <p>9 was -- I was only informed that he was terminated while</p> <p>10 I was off.</p> <p>11 Q You didn't ask anybody why was he terminated?</p> <p>12 A No.</p> <p>13 Q What about Mr. Maly, he was terminated also, right?</p> <p>14 A Well, he was -- he basically, as the facility was</p> <p>15 winding down, he had to be term -- there was nothing for</p> <p>16 him to do.</p> <p>17 Q And that was the reason for his termination?</p> <p>18 A Right.</p> <p>19 Q Okay. And Mr. Hansell was terminated?</p> <p>20 A That's correct.</p> <p>21 Q And you were involved in that?</p> <p>22 A Well, again, that took place while I was off, but that</p> <p>23 one, I do have knowledge that it was based on his lack</p> <p>24 of communicating with management during this entire</p> <p>25 process as well as his hand in the Test Cell 32 or Test</p>	<p>1 A -- a long time ago.</p> <p>2 Q -- handle on what you did as this --</p> <p>3 A This is really a long time ago, I mean, I'm having a</p> <p>4 hard time recollecting a lot of this stuff.</p> <p>5 I think the only thing that I talked to them about</p> <p>6 was the length of time that we should put this contract</p> <p>7 in place, because I didn't want it to be a short-term</p> <p>8 contract because of the investments that we were about</p> <p>9 to impart on for AVL.</p> <p>10 Q Okay. As I mentioned to you earlier, one of the things</p> <p>11 that the Court may or may not be asked to look at or the</p> <p>12 jury --</p> <p>13 A Um-hmm.</p> <p>14 Q -- will be what each of the two parties might have</p> <p>15 intended concerning certain language in the contract.</p> <p>16 Aside from the term, the five-year term of the</p> <p>17 contract, which you just said that that was important to</p> <p>18 you, who would be -- you know, if I wanted to ask</p> <p>19 somebody what was the intent by this provision, is there</p> <p>20 a single person at AVL that would be the right person to</p> <p>21 ask those kinds of questions or would it be a number of</p> <p>22 people?</p> <p>23 A Well, I think, first of all, it would be a number of</p> <p>24 people. I don't know if there's one singular person</p> <p>25 that you can ask that question of.</p>
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<p>1 Cell 7 situation.</p> <p>2 Q So when you say his lack of communicating with</p> <p>3 management during this process, you mean during the</p> <p>4 process of negotiating the Master Agreement?</p> <p>5 A Throughout the entire process.</p> <p>6 Q Including the negotiation of the Master Agreement?</p> <p>7 A Correct.</p> <p>8 Q When you -- did you see drafts of the Master Agreement</p> <p>9 as it was being negotiated?</p> <p>10 A Not -- I may have seen a couple of drafts, but those</p> <p>11 were mainly handled between Dwight Hansell and our legal</p> <p>12 counsel.</p> <p>13 Q Okay. And who was your legal counsel?</p> <p>14 A At that time it would have gone through Chet Ricker's</p> <p>15 organization to legal counsel, which would be --</p> <p>16 Q The Kerr Russell firm?</p> <p>17 A I believe that's who that was. You'd have to ask Chet</p> <p>18 that question.</p> <p>19 Q And to the extent you looked at any drafts of the Master</p> <p>20 Agreement, do you recall whether you ever asked anybody</p> <p>21 about what particular draft terms meant or asked anybody</p> <p>22 to change anything specific? I know this was a long</p> <p>23 time ago, I'm just --</p> <p>24 A Yeah, this was --</p> <p>25 Q -- trying to get a --</p>	<p>1 Q Okay. Did you read the Master Agreement before you</p> <p>2 signed it?</p> <p>3 A Yes.</p> <p>4 Q Okay. And does your signature appear on page 12 of the</p> <p>5 Master Agreement?</p> <p>6 A That is my signature.</p> <p>7 Q And when you read the Master Agreement before signing</p> <p>8 it, were you under any pressure to sign it immediately</p> <p>9 or did you have a fair opportunity to read it and talk</p> <p>10 to whomever you wanted to talk to about it?</p> <p>11 A I was not under pressure, I had fair time.</p> <p>12 Q After you read it, did you go to Mr. Hansell or</p> <p>13 Mr. Golda or anybody else and talk with them about any</p> <p>14 of the terms of the agreement that you had questions</p> <p>15 about?</p> <p>16 A Not that I recollect.</p> <p>17 Q Okay. What about with legal counsel, did you speak -- I</p> <p>18 don't want to -- I don't want to know about any --</p> <p>19 A Right.</p> <p>20 Q -- the substance of any discussions --</p> <p>21 A Right.</p> <p>22 Q -- but did you confer with legal counsel about any</p> <p>23 specific terms?</p> <p>24 A Not that I recollect.</p> <p>25 Q Would that have been, as far as you know, Mr. Hansell's</p>

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<p>1 responsibility?</p> <p>2 A He was working through the -- through the legal portion</p> <p>3 of this on behalf of the company, yes.</p> <p>4 Q Okay. So between the time you read the final version of</p> <p>5 the agreement and signed it, you didn't have -- you</p> <p>6 didn't ask anybody any questions about its terms?</p> <p>7 A Well, we reviewed the terms, obviously, before I signed</p> <p>8 this, I wouldn't just take a document and sign it.</p> <p>9 Q Right. Who's "we"?</p> <p>10 A I reviewed this with Dwight Hansell --</p> <p>11 Q Okay.</p> <p>12 A -- and Mike Golda because in here was the impacts to us</p> <p>13 from a operational and from a customer impact</p> <p>14 standpoint.</p> <p>15 Q And as you reviewed it with Mr. Hansell and Mr. Golda,</p> <p>16 do you recall asking them any specific questions about</p> <p>17 particular provisions in the agreement and what they</p> <p>18 meant?</p> <p>19 A I can't -- that's so long ago, I don't remember that</p> <p>20 kind of --</p> <p>21 Q So you don't remember specifically --</p> <p>22 A Right.</p> <p>23 Q -- objecting to anything in the agreement?</p> <p>24 A No.</p> <p>25 Q As you sit here today, having read the agreement before</p>	<p>1 FME because they just didn't give us all the</p> <p>2 information, we did not have all the information when I</p> <p>3 signed this, and that's the part that -- I didn't know</p> <p>4 they didn't own the building. Why didn't they tell me</p> <p>5 that?</p> <p>6 Q What relevance did that have?</p> <p>7 A Because without control of the building, why would</p> <p>8 I -- why would I not immediately start to question what</p> <p>9 is your terms of length of time, what is your</p> <p>10 relationship with your -- with your -- with your</p> <p>11 landlord? What provisions do you have with them for</p> <p>12 being able to do this? I mean, we invested millions of</p> <p>13 dollars --</p> <p>14 Q Okay.</p> <p>15 A -- in a facility that we didn't realize FME had no</p> <p>16 control over.</p> <p>17 Q Well, as you sit here today, does the fact that FME</p> <p>18 leased the OP building from the owner, did that have</p> <p>19 anything at all to do with any of the problems that AVL</p> <p>20 ran into with its engine testing program in that</p> <p>21 building?</p> <p>22 A Not -- it did not have to do with those specific</p> <p>23 problems, but it had to do with the ability for us to</p> <p>24 have a long-term contract in that building. I don't</p> <p>25 know what the provisions and terms were with their</p>
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<p>1 you signed it and again having read the agreement as</p> <p>2 recently as yesterday, does anything come to mind in</p> <p>3 this agreement that you believe does not accurately</p> <p>4 reflect what your intent was when you signed it?</p> <p>5 A I don't believe there's misrepresentation of what we</p> <p>6 wanted to do in this, I mean, I think it represents in</p> <p>7 general what we wanted to do.</p> <p>8 Q Okay. With the benefit of hindsight, again, having</p> <p>9 signed the agreement and having read it as recently as</p> <p>10 yesterday and now knowing about this whole mess --</p> <p>11 A Right.</p> <p>12 Q -- litigation --</p> <p>13 A Right.</p> <p>14 Q -- is there anything that comes to mind that if you had</p> <p>15 the opportunity, you would write differently in this</p> <p>16 agreement?</p> <p>17 A Well, I think that was the intent when we were -- when</p> <p>18 we were trying to redo the master services agreement,</p> <p>19 that there were provisions in here, and for me to point</p> <p>20 out specific provisions, I'd have to go through this in</p> <p>21 great detail, but in hindsight, yeah, there's probably a</p> <p>22 few things I would have done differently.</p> <p>23 Q Anything come to mind?</p> <p>24 A Well, I think we would have put -- we would have put</p> <p>25 responsibilities -- some stronger responsibilities on</p>	<p>1 landlord, but any prudent businessman would want to know</p> <p>2 what those are so that if I'm investing millions of</p> <p>3 dollars on behalf of this company, that I can do so with</p> <p>4 the faith that the landlord can't pull the rug out from</p> <p>5 behind me.</p> <p>6 Q Right. And do you know what the terms of the lease</p> <p>7 between FME and its landlord were?</p> <p>8 A I was never given that information.</p> <p>9 Q Okay. Do you know whether that was included in the due</p> <p>10 diligence that your people did?</p> <p>11 A Not that I'm aware of.</p> <p>12 Q That's a publicly-available document --</p> <p>13 A Right.</p> <p>14 Q -- is it not?</p> <p>15 A I -- you know, you -- I don't know.</p> <p>16 Q You don't know?</p> <p>17 A I don't know.</p> <p>18 Q You don't know whether the owner of a piece of real</p> <p>19 estate is a matter of public record?</p> <p>20 A When we worked with FME, they described their campus as</p> <p>21 including the OP building, they told us that was</p> <p>22 included as part of their campus.</p> <p>23 Q Did they ever tell you, "We own the OP building"?</p> <p>24 A They never told us they didn't.</p> <p>25 Q Now, I want to make sure the record is clear on this.</p>

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<p>1 Did the fact that FME leased the OP building have</p> <p>2 anything at all to do with the problems that AVL and</p> <p>3 FME ultimately ran into in 2011 as they relate to AVL's</p> <p>4 continuing ability to test engines in the OP building?</p> <p>5 MR. HERRMANN: Object to foundation. Go ahead.</p> <p>6 A If you want to say did it have to do with the -- with</p> <p>7 the air permitting issue? No. Did it have to do with</p> <p>8 the cooling? No. But there's a bigger business thing</p> <p>9 here that we're forgetting, and that is not being able</p> <p>10 to know that -- what happens if we're three years into</p> <p>11 this and suddenly the landlord says, "Well, we're going</p> <p>12 to pull -- we're going to pull -- we want the building</p> <p>13 back," and then --</p> <p>14 BY MR. DeGEORGE:</p> <p>15 Q That didn't happen.</p> <p>16 A No, but it could have.</p> <p>17 Q And you have no idea whether the landlord had any such</p> <p>18 right under the lease?</p> <p>19 A Right, but it could -- but they could have, right?</p> <p>20 Q How could they if you don't know what the lease said?</p> <p>21 A Okay, that's true, that I would not disagree with.</p> <p>22 Q Okay. So you will agree that as you sit here today, the</p> <p>23 fact that that was a leased building had no bearing on</p> <p>24 AVL's ability to test engines in that plant, in that</p> <p>25 building?</p>	<p>1 Q Okay. Now if you'll turn to page 3 of the Master</p> <p>2 Agreement, Section 4.1, the last sentence of Section 4.1</p> <p>3 says, "This Agreement in no form or fashion constitutes</p> <p>4 a commitment from AVL or (sic) FME for any purchase</p> <p>5 order or a commitment for FME to accept any purchase</p> <p>6 order," did I read that correctly?</p> <p>7 A Which line are you in? I'm sorry.</p> <p>8 Q The last sentence of Section 4.1.</p> <p>9 A Okay.</p> <p>10 Q Is it your understanding that this sentence means that</p> <p>11 FME made no commitment to accept any purchase order it</p> <p>12 may have received from AVL in relation to the Master</p> <p>13 Agreement?</p> <p>14 A If you read this literally, that's correct.</p> <p>15 Q Okay. Is there any other way to read it?</p> <p>16 A No, I'm just --.</p> <p>17 Q Okay. Let's go to the second page of the Master</p> <p>18 Agreement, Section 2.1. There's a defined term, "test</p> <p>19 facilities." When you signed this agreement, did you</p> <p>20 have an understanding of what that term meant?</p> <p>21 A At that time, we considered the OP building to be our</p> <p>22 test -- the test facilities that we were going to be</p> <p>23 putting our test cells in.</p> <p>24 Q And then if you'll go down to the one, two, three,</p> <p>25 four, five, six, seventh line of Section 2.1, there's a</p>
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<p>1 A I would have to say that directly, that's true.</p> <p>2 Q Okay. Now, the question I had asked you, and we talked</p> <p>3 about the lease, was whether with the benefit of</p> <p>4 hindsight and knowing we're now in litigation, whether</p> <p>5 there's anything that you would have done differently in</p> <p>6 the master services agreement -- or the Master</p> <p>7 Agreement. Anything else?</p> <p>8 A Again, without having gone back completely through this</p> <p>9 in any great detail, I don't know of anything.</p> <p>10 Q Well, spend whatever time you need with it.</p> <p>11 A Yeah, I --.</p> <p>12 Probably not at this point.</p> <p>13 Q Okay. Let's -- I just want to talk about some of the</p> <p>14 specific language in the agreement. We'll start with</p> <p>15 Section 1.1 on the first page.</p> <p>16 A Um-hmm.</p> <p>17 Q And it talks about the services that are encompassed by</p> <p>18 this agreement. And you'll see in the third line down</p> <p>19 right before the term "services" is defined or in the</p> <p>20 definition of "services," it says "as are mutually</p> <p>21 agreed upon."</p> <p>22 When it says "as mutually agreed upon," is it your</p> <p>23 understanding that that meant mutually being both AVL</p> <p>24 and FME?</p> <p>25 A Yes.</p>	<p>1 phrase that says "above the test floor," do you see</p> <p>2 that?</p> <p>3 A Yes.</p> <p>4 Q And the test floor refers to the test floor in the</p> <p>5 OP building?</p> <p>6 A In this case it does, yes.</p> <p>7 Q And then the final sentence of -- you'll see at the top</p> <p>8 of Section 2.1 it refers to AVL's exclusive use of the</p> <p>9 test facilities, right?</p> <p>10 A Right.</p> <p>11 Q And then the final sentence says, "Notwithstanding the</p> <p>12 foregoing, AVL acknowledges that FME shall have the</p> <p>13 right to utilize the test facilities for testing of FME</p> <p>14 manufactured engines or licensor manufactured engines or</p> <p>15 any engines or equipment tested congruent with FME's</p> <p>16 conventional business model," did I read that correctly?</p> <p>17 A You did.</p> <p>18 Q So was it your understanding when you signed this</p> <p>19 agreement that that sentence meant that AVL had -- I'm</p> <p>20 sorry -- that FME had the priority right to use the test</p> <p>21 facilities as long as it did so congruent with its</p> <p>22 conventional business model?</p> <p>23 MR. HERRMANN: Object to form.</p> <p>24 A I do not interpret this as them having priority.</p> <p>25 BY MR. DeGEORGE:</p>

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<p>1 Q Okay. How do you interpret it?</p> <p>2 A I interpret it as two companies within the facility.</p> <p>3 Q Okay. So as far as your intent was when you signed this</p> <p>4 agreement, neither party had priority?</p> <p>5 A I -- no. My intent was we would have priority, but we</p> <p>6 understood that FME may need to test engines during that</p> <p>7 period of time.</p> <p>8 Q Okay. And that if FME wanted to test an engine and you</p> <p>9 also wanted to test an engine in the same test stand, it</p> <p>10 was your understanding and intent when you signed this</p> <p>11 that AVL would have the right to say, "We're using that</p> <p>12 test stand, you can't"?</p> <p>13 A My understanding would be we would negotiate how we</p> <p>14 would make that happen, that we would work as a team to</p> <p>15 do that.</p> <p>16 Q So did either party have the priority right to use a</p> <p>17 given test stand at a given time under this agreement?</p> <p>18 A The test cells that we invested money in, that we</p> <p>19 brought up, we had -- we were the priority people in</p> <p>20 that case. And they acknowledged that. Because we</p> <p>21 invested millions of dollars in --</p> <p>22 Q Who acknowledged that?</p> <p>23 A Well, there was no need to use those test cells that we</p> <p>24 were using, that we were doing, it only came down to one</p> <p>25 test cell that became an issue, and that was Test</p>	<p>1 A Yeah, we -- we --</p> <p>2 Q -- on that test stand?</p> <p>3 A We never argued that point with them. We only argued</p> <p>4 the point of how we would -- how we would move out of</p> <p>5 that test cell and the fact that we had spent -- it was</p> <p>6 going to cost us another million dollars to move our</p> <p>7 engine.</p> <p>8 Q Okay, let's talk about Section 4.3 on page 3, which</p> <p>9 reads, "FME shall have the right to terminate this</p> <p>10 Agreement upon 30 days prior written notice to AVL, if</p> <p>11 during any calendar year, there is not at least six</p> <p>12 months of revenue generated under this Agreement from at</p> <p>13 least one test cell at the test facilities," did I read</p> <p>14 that correctly?</p> <p>15 A Yes.</p> <p>16 Q Tell me how much revenue was generated from the</p> <p>17 use -- from AVL's use of one or more test cells at the</p> <p>18 FME plant in calendar year 2009?</p> <p>19 A I don't have that number, but I can tell you it</p> <p>20 was -- it was small.</p> <p>21 Q It was zero, wasn't it?</p> <p>22 A It was very small, yep.</p> <p>23 Q It was zero.</p> <p>24 A Okay, then it's zero.</p> <p>25 Q Okay. And if it was zero, this provision would appear</p>
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<p>1 Cell 7.</p> <p>2 Q And who had the priority on that test cell?</p> <p>3 A Obviously, FME thought they had the priority.</p> <p>4 Q And did you think you had the priority?</p> <p>5 A I felt that they had an obligation, since we had</p> <p>6 invested a huge amount of money, to give us a chance to</p> <p>7 be able to do what we needed to do to support our</p> <p>8 customer.</p> <p>9 Q Do you know of a single written or oral communication</p> <p>10 from AVL to FME in which AVL took the position that it</p> <p>11 had the superior right to use that test cell?</p> <p>12 A No, I don't, that I don't.</p> <p>13 Q Now, do you have a view -- we're talking about Test</p> <p>14 Cell 7, right?</p> <p>15 A Um-hmm.</p> <p>16 Q Okay. Do you have an understanding or a view as to</p> <p>17 whether the engine testing that FME did in Test Cell 7</p> <p>18 was congruent with FME's conventional business model?</p> <p>19 A I can't answer that question, I'm not a hundred percent</p> <p>20 sure, so I don't think I can answer that.</p> <p>21 Q You just don't know one way or the other?</p> <p>22 A I just don't know one way or the other.</p> <p>23 Q But if it was congruent with FME's conventional business</p> <p>24 model, then FME had at least some right to test that</p> <p>25 engine --</p>	<p>1 to afford FME the right to terminate the agreement,</p> <p>2 correct?</p> <p>3 A That's correct.</p> <p>4 Q Then if we can turn to the next page, 4, Section 5.3?</p> <p>5 Are you with me?</p> <p>6 A Yep.</p> <p>7 Q "Neither party will have any right, power, or authority</p> <p>8 to create any obligation, express or implied, or make</p> <p>9 any representation on behalf of the other party," did I</p> <p>10 read that correctly?</p> <p>11 A That's correct.</p> <p>12 Q And would this to you mean that AVL had no authority to</p> <p>13 make any commitments to CAT on behalf of FME?</p> <p>14 A I don't believe I can --</p> <p>15 MR. HERRMANN: Object to form. Go ahead.</p> <p>16 A I can't -- I will not -- this is a legal point which I</p> <p>17 don't understand, nor can I comment on.</p> <p>18 BY MR. DeGEORGE:</p> <p>19 Q So you have no -- nothing to say at all about what the</p> <p>20 intent was on this provision?</p> <p>21 A No, I don't --</p> <p>22 Q Okay.</p> <p>23 A I don't --</p> <p>24 Q Fair enough.</p> <p>25 A I don't know.</p>

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<p>1 Q If you'll look at Section 11.1 on page 7?</p> <p>2 A Okay.</p> <p>3 Q It contains language concerning FME's</p> <p>4 intended -- indemnity obligations and then I'm reading</p> <p>5 from the -- the fourth line down I'm going to read.</p> <p>6 "Arising out of or connected with (a) any actual or</p> <p>7 alleged breach by FME of any term, condition, warranty</p> <p>8 or covenant set forth in this Agreement," did I read</p> <p>9 that correctly?</p> <p>10 A Yes.</p> <p>11 Q Okay. As you sit here today, do you believe that FME</p> <p>12 breached any term, condition, warranty or covenant in</p> <p>13 the Master Agreement?</p> <p>14 MR. HERRMANN: Object to the extent it calls for a</p> <p>15 legal conclusion.</p> <p>16 A Obviously, we're sitting here for a reason, and that</p> <p>17 reason is that we do believe that, obviously.</p> <p>18 BY MR. DeGEORGE:</p> <p>19 Q So what part of this agreement did FME breach?</p> <p>20 A I have not been involved in this -- in this lawsuit to</p> <p>21 any detail at all, to no detail, so I don't believe I</p> <p>22 can make a reasonable comment to what this lawsuit is</p> <p>23 about in that area.</p> <p>24 Q So as you sit here today, you have no view or opinion as</p> <p>25 to what, if any, provision in the Master Agreement FME</p>	<p>1 A That is a possibility, yes. However, once again, we</p> <p>2 would have negotiated this in a way that would have not</p> <p>3 allow -- we didn't want them to get into trouble with</p> <p>4 the DNR of Wisconsin, that was never our intention.</p> <p>5 Q And now if you'll go to Section 19.3 on page 11, this is</p> <p>6 a fairly typical provision you see in contracts,</p> <p>7 Mr. Corbin --</p> <p>8 A Right.</p> <p>9 Q -- and this particular one says that this Master</p> <p>10 Agreement "supersedes any and all previous or</p> <p>11 contemporaneous oral or written communications,</p> <p>12 representations, understandings, agreements,</p> <p>13 negotiations, and discussions with respect to the</p> <p>14 subject matter hereof."</p> <p>15 What does that mean to you?</p> <p>16 A You know what? This is a legal -- a legal -- a legal</p> <p>17 paragraph that I don't feel comfortable commenting, I</p> <p>18 really don't.</p> <p>19 Q Okay, fair enough. The last sentence of Section 19.3</p> <p>20 says, "The parties acknowledge and agree that there are</p> <p>21 no conditions precedent to the effectiveness of this</p> <p>22 Agreement and that there are no written or oral</p> <p>23 agreements, promises, understandings, or representations</p> <p>24 directly or indirectly related to this Agreement or the</p> <p>25 subject matter hereof that are not set forth herein."</p>
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<p>1 allegedly breached?</p> <p>2 A No.</p> <p>3 Q Okay. Who would be the best person I should probably</p> <p>4 talk to about that?</p> <p>5 A I think Chet Ricker would be the right person to talk</p> <p>6 to.</p> <p>7 Q Okay, thank you. If you look at Section 12.3 on page 8?</p> <p>8 A Okay.</p> <p>9 Q 12.3 refers to FME's indemnity obligations arising from</p> <p>10 its violations of any environmental laws.</p> <p>11 As you sit here today, do you have any view on any</p> <p>12 environmental laws that FME violated?</p> <p>13 A Not that I'm aware of.</p> <p>14 Q Okay. And Section 14.1 also on page 8 expresses the</p> <p>15 parties' agreement that all activities and work</p> <p>16 performed under the Master Agreement shall be carried</p> <p>17 out in accordance with all applicable laws, regulations,</p> <p>18 and policies of the United States.</p> <p>19 Do you have a view or did you when you signed this</p> <p>20 as to whether all applicable laws, regulations, and</p> <p>21 policies included environmental permits?</p> <p>22 A Yes.</p> <p>23 Q So had FME pursued the so-called judicial solution and</p> <p>24 intentionally violated its permit, it would have in turn</p> <p>25 violated Section 14.1 of the Master Agreement?</p>	<p>1 Let me ask you this, because I know that there's a</p> <p>2 certain legal aspect to this, so I'll just ask you are</p> <p>3 you aware of any written or oral -- other than what is</p> <p>4 set forth in the Master Agreement, are you aware of any</p> <p>5 other written or oral agreements, promises,</p> <p>6 understandings, or representations concerning the</p> <p>7 subject matter of this contract?</p> <p>8 A No.</p> <p>9 Q Okay. And Section 19.7 says, "This Agreement may be</p> <p>10 amended or altered in any of its provisions only by the</p> <p>11 mutual written agreement of the parties."</p> <p>12 Do you know if there was ever any such amendment or</p> <p>13 alteration to the Master Agreement?</p> <p>14 A Not that I'm aware of.</p> <p>15 Q Now, having read -- having signed the Master Agreement</p> <p>16 and having read it as recently as yesterday, do you</p> <p>17 recall anything in the Master Agreement that expressly</p> <p>18 required FME to either change its air permit or get a</p> <p>19 new air permit?</p> <p>20 A Not that I'm aware of.</p> <p>21 Q Okay. Are you aware of anything in the Master Agreement</p> <p>22 that required FME to pay for any equipment that might</p> <p>23 become necessary for AVL to test engines in the</p> <p>24 OP building?</p> <p>25 A No.</p>

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<p>1 Q All right, we're almost done.</p> <p>2 MR. DeGEORGE: Is this 59?</p> <p>3 COURT REPORTER: Yes.</p> <p>4 (Exhibit 59 was marked for identification.)</p> <p>5 BY MR. DeGEORGE:</p> <p>6 Q Mr. Corbin, you've been handed Exhibit Number 59, which</p> <p>7 I will represent to you we received from Mr. Hansell in</p> <p>8 connection with a subpoena he received --</p> <p>9 A Right.</p> <p>10 Q -- in this case. First just tell me what Exhibit 59 is?</p> <p>11 A It was a memo to file concerning the actions that Dwight</p> <p>12 took on behalf of the company on Test Cell 32.</p> <p>13 Q And you wrote this?</p> <p>14 A Yes.</p> <p>15 Q Is this one of the documents you turned over to your</p> <p>16 attorneys?</p> <p>17 A This was one of the documents that I turned over to</p> <p>18 Human Resources to put into his file.</p> <p>19 Q All right. So this is not --</p> <p>20 A Oh, I'm sorry. Did I turn this over?</p> <p>21 Q I mean, we talked earlier about your computer and --</p> <p>22 A Correct.</p> <p>23 Q -- notes and files you had. I'm just wondering if this</p> <p>24 was in that material that you turned over to your</p> <p>25 attorneys in connection with this case?</p>	<p>1 understand what we were going to do as a company based</p> <p>2 upon that test cell, how we were going to react to -- to</p> <p>3 how we were going to have to remove the engine and move</p> <p>4 on, he informed FME, "Well, we're going to go ahead and</p> <p>5 move," and he had never been -- he was not authorized to</p> <p>6 do that at that point.</p> <p>7 Q So your understanding is he told somebody at FME that</p> <p>8 they could use that test cell?</p> <p>9 A Yeah, that we would vacate it.</p> <p>10 (Exhibit 60 was marked for identification.)</p> <p>11 BY MR. DeGEORGE:</p> <p>12 Q Mr. Corbin, could you tell us what Exhibit 60 is?</p> <p>13 A This was another memo to file. During this period of</p> <p>14 time, I was spending an exorbitant amount of time in</p> <p>15 Beloit trying to manage this situation, and when I asked</p> <p>16 him to come and to join me and also to take on some of</p> <p>17 the issues that were in front of us, he basically said</p> <p>18 he would not do it.</p> <p>19 Q Okay. Toward the bottom of Exhibit 60, there appears to</p> <p>20 be some sort of a stamp that says "Oakland County</p> <p>21 Michigan." Do you know why that's on here?</p> <p>22 A I have no clue.</p> <p>23 Q So those handwritten notes are not yours?</p> <p>24 A They are definitely not mine. They are not mine.</p> <p>25 Q I'll hand you what has been previously marked as</p>
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<p>1 A I don't -- I don't recall if I turned this over or</p> <p>2 this could have also come out of his -- his HR file,</p> <p>3 too.</p> <p>4 Q And that would have been his HR file at AVL?</p> <p>5 A Yes, that's correct.</p> <p>6 Q Okay.</p> <p>7 A I remember writing this. I don't remember how this got</p> <p>8 produced, obviously.</p> <p>9 Q And the subject of this -- tell me why you prepared</p> <p>10 this?</p> <p>11 A During this period of time, it was apparent that Dwight</p> <p>12 had been taking some actions that were not under his</p> <p>13 authority, so I wanted to make sure that it was</p> <p>14 documented as such. And none of us were at that time</p> <p>15 authorized to do this and so this was just a memo to</p> <p>16 file that said --</p> <p>17 Q And this refers to -- I think we have been referring to</p> <p>18 it as Test Stand 7, is --</p> <p>19 A Seven and --</p> <p>20 Q -- that the same thing?</p> <p>21 A Yeah, we call it 32, yeah. Seven and 32 are the same</p> <p>22 thing.</p> <p>23 Q And what decision did Mr. Hansell make without informing</p> <p>24 you?</p> <p>25 A He informed -- before we had a chance to completely</p>	<p>1 Exhibit 35.</p> <p>2 A Got it.</p> <p>3 Q Did I give you two copies of that? Yeah.</p> <p>4 A You did.</p> <p>5 MR. HERRMANN: Thank you.</p> <p>6 BY MR. DeGEORGE:</p> <p>7 Q I'll represent to you, Mr. Corbin, that Exhibit 35 is a</p> <p>8 document that we received from Mr. Hansell, and I</p> <p>9 believe he testified that this is a document he prepared</p> <p>10 in relation -- in relation to the termination of his</p> <p>11 employment --</p> <p>12 A Sure.</p> <p>13 Q -- by AVL. Have you seen this document before?</p> <p>14 A I have not.</p> <p>15 Q The first page, it says History of Operations at Beloit,</p> <p>16 and the -- the sixth bulleted item -- now, and I</p> <p>17 understand you didn't write this, you've never seen it</p> <p>18 before.</p> <p>19 A Sure.</p> <p>20 Q But Mr. Hansell wrote, "Details of the contract with FME</p> <p>21 were reviewed with Ray Corbin, President, Chet Ricker,</p> <p>22 CFO, Mike Golda, Operations Director, and Jeffrey -- and</p> <p>23 Jeff Brantley," B-r-a-n-t-l-e-y, "AVL attorney.</p> <p>24 Everyone agreed to the contract and it was signed by Ray</p> <p>25 Corbin."</p>

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<p>1 Is that consistent with your recollection?</p> <p>2 A That's consistent with what I've said so far, yes.</p> <p>3 Q Okay. And then it says parenthetically, again, this is</p> <p>4 Mr. Hansell writing this, "(No one saw the need to</p> <p>5 include the requirement for adequate air permitting in</p> <p>6 the contract - if something was missed, everyone missed</p> <p>7 it)."</p> <p>8 Tell me what your reaction is to that statement?</p> <p>9 A Again, this was all -- if you look backwards from today,</p> <p>10 he probably has -- this is his opinion, and I would say</p> <p>11 it applies to both of us, both FME and AVL, that this</p> <p>12 was a -- an area we should have explored deeper</p> <p>13 together.</p> <p>14 Q And if you'll go to the next page, they're not numbered,</p> <p>15 but it's the --</p> <p>16 A Sure.</p> <p>17 Q -- second page of Exhibit 35 --</p> <p>18 A Okay.</p> <p>19 Q -- one, two, three, four, five, six, seven, eight, nine,</p> <p>20 ten, the tenth bulleted item, it reads, "We were told by</p> <p>21 the CFO and President AVL did not have the capital</p> <p>22 required for the additional investment."</p> <p>23 A I'm not sure what he's talking about there.</p> <p>24 Q Okay. So you have no idea what that refers to?</p> <p>25 A Well, without reading the other bullets, I'm not sure</p>	<p>1 the contract at that point. In addition, we didn't have</p> <p>2 enough information about how we were going to do the</p> <p>3 permitting -- they were going to do the permitting for</p> <p>4 me to be able to do an adequate job of trying to</p> <p>5 understand what it would take.</p> <p>6 Q When did FME terminate the contract?</p> <p>7 A We were told that they would not -- that we would</p> <p>8 not -- we were not welcome in the facility anymore. I</p> <p>9 was at home in -- after surgery and I was on the phone</p> <p>10 with Chet and -- I believe Chet and Dimitri Kazarinoff</p> <p>11 were there representing AVL and that was a statement</p> <p>12 made by Mr. Whittier.</p> <p>13 Q He said what exactly?</p> <p>14 A He said, "We do not see how we can move forward with</p> <p>15 this relationship."</p> <p>16 Q And was that because of the fuel limitation?</p> <p>17 A I think it was just because of all of the uncertainty in</p> <p>18 that building that he faced and we faced.</p> <p>19 Q Did he say why?</p> <p>20 A I don't recall that.</p> <p>21 Q Did he say, "Get out"?</p> <p>22 A That certainly was the message that we received.</p> <p>23 Q And when was that?</p> <p>24 A September of 2011.</p> <p>25 Q Okay. Was there a meeting in September of 2011 where</p>
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<p>1 what he's -- what he's --</p> <p>2 Q Well, let me ask you this.</p> <p>3 A Okay. So this --</p> <p>4 Q Okay.</p> <p>5 A This is in reference to the air handling -- the</p> <p>6 air -- the clean air handling equipment, and what he</p> <p>7 said here is a true statement, we -- we did not between</p> <p>8 Chet and I have the authorization, nor the money, to</p> <p>9 go do this without preparing a business case for our</p> <p>10 owner.</p> <p>11 Q Okay. And did you ever do that?</p> <p>12 A No, we never got to that point.</p> <p>13 Q Okay. So the record is clear, you and Mr. -- neither</p> <p>14 you, Mr. Ricker, nor anybody else at AVL as far as you</p> <p>15 know ever presented a formal business case to AVL in</p> <p>16 Austria, I assume you're referring to --</p> <p>17 A Right.</p> <p>18 Q -- concerning capital investment at the FME plant?</p> <p>19 A For this particular area, that's correct. For all</p> <p>20 capital investments, we have to go to -- to AVL Graz.</p> <p>21 Q And so the record is entirely clear, AVL Michigan did</p> <p>22 not formally go to AVL Austria and make a business case</p> <p>23 for investing additional money in the FME plant in the</p> <p>24 summer of 2011 or thereafter?</p> <p>25 A Because there was no reason to because FME terminated</p>	<p>1 you physically were present?</p> <p>2 A No. I was unable to travel at that time.</p> <p>3 Q So September 23, 2011, you did not attend a meeting at</p> <p>4 the FME plant?</p> <p>5 A No. I was on the phone at that time.</p> <p>6 Q Okay. And do you recall whether -- I know you weren't</p> <p>7 physically there, but whether Mr. Whittier at that</p> <p>8 meeting presented a written letter to AVL that it was</p> <p>9 not going to renew the Master Agreement?</p> <p>10 A I believe that's the case, yes.</p> <p>11 Q You believe that happened?</p> <p>12 A Yeah.</p> <p>13 Q Have you seen that letter?</p> <p>14 A I have not seen that letter. Not that I recall it, not</p> <p>15 that I personally recall.</p> <p>16 Q But your recollection is that happened --</p> <p>17 A Right.</p> <p>18 Q -- at that meeting?</p> <p>19 A Yes.</p> <p>20 Q If you'll turn to the last page of Exhibit 35, I want to</p> <p>21 talk about three bulleted items sort of in the middle.</p> <p>22 The first -- three in a row. The first one begins</p> <p>23 "Sometime in March," do you see that?</p> <p>24 A The third bullet?</p> <p>25 Q No, no, no. It's about one, two, three, four, five,</p>

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<p>1 six, the seventh bullet down starts with the phrase</p> <p>2 "Sometime in March."</p> <p>3 A On the last page?</p> <p>4 Q Yeah. Oops, I'm sorry, second to the last page, my</p> <p>5 mistake.</p> <p>6 A Sometime -- oh, okay, on March --</p> <p>7 Q Yes. It says, "Sometime in March, I received a call,"</p> <p>8 the second to the last page?</p> <p>9 A Yep, got it.</p> <p>10 Q Okay. Mr. Hansell testified that in March of 2011, he</p> <p>11 received a call from you where, according to</p> <p>12 Mr. Hansell, you said that AVL was fucked and that you</p> <p>13 told him that AVL had hired an attorney who specialized</p> <p>14 in air permits.</p> <p>15 Do you remember that conversation?</p> <p>16 A Sure.</p> <p>17 Q Is that something you would have said?</p> <p>18 A Well, I probably didn't put it that way, but I did -- I</p> <p>19 did tell him that I hired Mark Thimke at that point.</p> <p>20 Q Okay. And do you recall what the problem was that you</p> <p>21 were telling him AVL was facing at that time? And this</p> <p>22 is March of 2011, I believe.</p> <p>23 A It came down to at that time, that's when the fuel</p> <p>24 burn issue became really apparent, and at that time I</p> <p>25 could get nobody either inside of FME or inside of the</p>	<p>1 that subject you were not involved with?</p> <p>2 A As far as that, the reason that he was fired and because</p> <p>3 of this, no.</p> <p>4 Q Why was he fired?</p> <p>5 A Well, we went through --</p> <p>6 Q Is it --</p> <p>7 A -- this once before.</p> <p>8 Q -- Test Stand 7?</p> <p>9 A Test Stand 7 and just the overall communication and</p> <p>10 management of this contract.</p> <p>11 Q The next paragraph, the second sentence says,</p> <p>12 "Permitting was never discussed in the initial contract</p> <p>13 that was approved by legal (Jeff Brantley) and signed by</p> <p>14 the President."</p> <p>15 Now, I know you're in no position to, unless you</p> <p>16 had a discuss -- well, did you and Mr. -- no, let</p> <p>17 me -- I can't talk about communications with</p> <p>18 Mr. Brantley.</p> <p>19 A Okay.</p> <p>20 Q Did you have a discussion with anybody before signing</p> <p>21 the Master Agreement about air permitting?</p> <p>22 A No.</p> <p>23 Q And I believe I asked you this before, but is it correct</p> <p>24 that Jeff Brantley was the outside attorney who worked</p> <p>25 with AVL in relation to the negotiation of the Master</p>
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<p>1 company that could adequately describe it to my -- to</p> <p>2 me, so I sought local help because I think it's always</p> <p>3 good to get help in the state that you're dealing with,</p> <p>4 so --.</p> <p>5 Q We talked a little bit earlier about the air permit's</p> <p>6 fuel use limitation and I may have asked you this</p> <p>7 question, and if I did, I apologize.</p> <p>8 A Sure.</p> <p>9 Q Am I correct that before -- prior to your signing the</p> <p>10 Master Agreement on August 28th, 2008, none of -- nobody</p> <p>11 from AVL who was participating in the due diligence</p> <p>12 process reported to you that the air permit had this</p> <p>13 fuel limitation?</p> <p>14 A That's correct.</p> <p>15 Q On the final page, I just have a couple final questions</p> <p>16 on this document.</p> <p>17 A Okay.</p> <p>18 Q There's a -- the second to the last paragraph</p> <p>19 reads -- begins, "They are now suggesting I was fired</p> <p>20 because I did not have a contract with FME that covered</p> <p>21 emissions permits."</p> <p>22 Do you have any rec -- do you have any knowledge</p> <p>23 about that?</p> <p>24 A No.</p> <p>25 Q So any communication that Mr. Hansell may have had on</p>	<p>1 Agreement?</p> <p>2 THE WITNESS: Am I allowed to answer that question</p> <p>3 or not?</p> <p>4 MR. HERRMANN: You can identify his role, just</p> <p>5 don't discuss communications --</p> <p>6 A Yeah, he was --</p> <p>7 MR. HERRMANN: -- you had with him.</p> <p>8 A -- our local counsel on this particular issue.</p> <p>9 MR. DeGEORGE: Okay. What time is it?</p> <p>10 VIDEOGRAPHER: 12:39.</p> <p>11 MR. DeGEORGE: All right. Well, this may take a</p> <p>12 very -- just a few minutes, I just have one more</p> <p>13 document, so why don't we just push ahead. Do you want</p> <p>14 to call Mr. Ricker?</p> <p>15 MR. HERRMANN: Well --</p> <p>16 MR. DeGEORGE: Let's go off the record.</p> <p>17 VIDEOGRAPHER: Off the record, 12:39 p.m.</p> <p>18 (Discussion held off the record.)</p> <p>19 VIDEOGRAPHER: Back on the record, 12:41.</p> <p>20 MR. DeGEORGE: Actually, there are a few more</p> <p>21 documents I forgot about, but I'll blow through these.</p> <p>22 What are we up to?</p> <p>23 COURT REPORTER: Sixty-one.</p> <p>24 MR. DeGEORGE: Okay. This is 51?</p> <p>25 COURT REPORTER: Sixty-one.</p>

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<p>1 MR. DeGEORGE: Sixty-one. Oops. There you go, 61. 2 (Exhibit 61 was marked for identification.) 3 BY MR. DeGEORGE: 4 Q Mr. Corbin, I've handed you what has been marked as 5 Exhibit 61. Could you tell us what this is? 6 A Yeah. This was a document that George Whittier sent to 7 me concerning the fact that two of the stacks that we 8 were -- that were currently in the facility were not 9 permitted by the State of -- by the Wisconsin Department 10 of Natural Resources under their air pollution control. 11 Q Now, Mr. Thimke disagreed with that view, did he not? 12 A That I -- I can't -- I can't say one way or the other. 13 Q You have no recollection of that? 14 A No, I have no recollection of that. 15 Q Okay. Then we'll look at Exhibit 62. 16 (Exhibit 62 was marked for identification.) 17 BY MR. DeGEORGE: 18 Q Can you tell us what Exhibit 62 is? 19 A Okay. This is a response back to George Whittier based 20 on his letter of the 20th. 21 Q So this is in response to Exhibit 61? 22 A Right. 23 Q All right. And you wrote 62? 24 A Correct, I wrote 62. 25 Q And you signed it?</p>	<p>1 had breached the Master Agreement? 2 A Yes. 3 Q Okay. And I believe the Complaint in the case contains 4 an allegation, and I know you've never read it, but I 5 want to ask you about it, contains an allegation that 6 had FM -- had AVL known about how the stacks were 7 treated in the air permit, it wouldn't have ever entered 8 into the Master Agreement in the first place? 9 A Right. 10 Q Is that a fair statement? 11 A Well, that's -- I think at that level, that 12 technol -- that technical data at that level would never 13 have been in the -- in a master services agreement. 14 Q That wasn't my question. 15 A Okay. 16 Q My question was -- 17 A Then I misunderstood. 18 Q -- had AVL known exactly how the stacks were treated in 19 the air permit, the Complaint says that had AVL known 20 that -- 21 A Okay. 22 Q -- that it wouldn't have entered into the Master 23 Agreement. My question to you is, is that an accurate 24 statement? 25 A Had we known that, had we known that, it would have</p>
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<p>1 A And I signed it. 2 Q Okay. And the second paragraph says that under the 3 Master Agreement, "FME is not allowed to terminate AVL's 4 usage of any of the four test cells utilized by AVL. 5 Continued interference and resulting delays in the 6 ability of AVL to fully operate any of the test cells 7 which AVL is entitled to operate pursuant to the 8 Agreement constitutes a material breach of the Agreement 9 by FME," did I read that correctly? 10 A You did. 11 Q So was it your position that as of roughly June 21, 12 2011, that FME had materially breached the Master 13 Agreement? 14 A They -- the reason -- the reason this was put in here 15 is, and if you go back up into the -- into the previous 16 paragraph, there was -- I asked for documentation and 17 proof that this was in fact a violation. That was not 18 provided. Under that provision, without having that 19 documentation, we felt that they were in breach of our 20 contract. 21 Q So the only breach you're referring to at this time was 22 not providing information? 23 A Well, no, they came and they shut us down. 24 Q Okay. So as of June 21, 2011, I just want to get this 25 straight, as of June 21, 2011, it was your view that FME</p>	<p>1 caused us to stand back and question a lot more about 2 the air permit at that point, yes. 3 Q Okay. 4 A So not that we would never have, but we would 5 have before we signed anything, we would have been very 6 careful in what we signed. 7 Q And when you signed the Master Agreement, you didn't 8 know what was in the air permit? 9 A I did not know that, yes. 10 Q Nobody had reported that to you -- 11 A That's correct. 12 Q -- from AVL? 13 A Yep. 14 Q Now, as of June 21, 2011, when you believed that FME had 15 materially breached the Master Agreement, did you or 16 anybody else from AVL to your knowledge communicate to 17 FME that, "We are cancelling or rescinding the Master 18 Agreement"? 19 A No. 20 Q This was previously marked as Exhibit 20. Exhibit 20, 21 Mr. Corbin, is a document that was marked at 22 Mr. Vietinghoff's deposition and this is an email he 23 wrote which you may or may not have seen before, but he 24 reports to CAT or EMD on June 23 of 2011, "It looks like 25 we have a solution and can be up and running again on</p>


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<p>1 Monday."</p> <p>2 Is it your recollection that a solution concerning</p> <p>3 the stack problem had been found?</p> <p>4 A That I don't remember at this point.</p> <p>5 Q You don't remember that?</p> <p>6 A Yeah.</p> <p>7 Q Okay. After you articulated your view in June of 2011</p> <p>8 that AVL -- that FME, I'm sorry, had breached the Master</p> <p>9 Agreement, isn't it true that AVL continued engine</p> <p>10 testing at the FME plant until roughly October of 2012?</p> <p>11 A That's correct.</p> <p>12 Q And that was under the Master Agreement?</p> <p>13 A That's correct.</p> <p>14 Q Are you aware of anybody from FME ever telling AVL that</p> <p>15 it could not continue to test engines in the</p> <p>16 OP building, provided that the limitations contained in</p> <p>17 the permit were met, did anyone ever say, "You are not</p> <p>18 allowed to conduct any more testing even if we can</p> <p>19 comply with the air permit"?</p> <p>20 A No.</p> <p>21 Q All right. Now we'll talk briefly about the Complaint.</p> <p>22 A Okay.</p> <p>23 Q And this was marked as Exhibit 1.</p> <p>24 A Right at the beginning, huh?</p> <p>25 Q Yeah. An oldie, but a goodie. I don't think you're</p>	<p>1 Q Yeah. Are you aware of representatives of FME and AVL</p> <p>2 discussing the fact that the air permit contained a fuel</p> <p>3 limitation?</p> <p>4 A I'm not aware of that.</p> <p>5 Q So no one -- nobody from AVL told you before you signed</p> <p>6 the contract that they had already discussed that</p> <p>7 issue --</p> <p>8 A No.</p> <p>9 Q -- with FME?</p> <p>10 A No.</p> <p>11 Q Now, I believe FME represented in the Master Agreement</p> <p>12 that at the time of the agreement, it was in compliance</p> <p>13 with all environmental laws, which would have included</p> <p>14 its permit, correct?</p> <p>15 A Correct.</p> <p>16 Q Are you aware of any -- are you aware of any way in</p> <p>17 which FME was not in compliance with environmental laws</p> <p>18 as of August 28th, 2008?</p> <p>19 A Concerning their facilities?</p> <p>20 Q Concerning anything, any environmental laws, are you</p> <p>21 aware of any ongoing violation as of August 28, 2008?</p> <p>22 A No.</p> <p>23 Q If you'll look at paragraph -- I'm sorry -- page 14 of</p> <p>24 the Complaint?</p> <p>25 A Which item?</p>
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<p>1 going to need to spend much time looking at this because</p> <p>2 I believe you testified earlier that you've never seen</p> <p>3 it before?</p> <p>4 A No.</p> <p>5 Q So you obviously played no role in its preparation?</p> <p>6 A No. At that time, I had left AVL as a full-time</p> <p>7 employee.</p> <p>8 Q Okay. Did anybody confer with you about the Complaint,</p> <p>9 you know, get your input for what went into the</p> <p>10 Complaint?</p> <p>11 A No.</p> <p>12 Q If you'll look at paragraph 18 which is on page 5 of the</p> <p>13 Complaint, Mr. Corbin, now, again, I know you haven't</p> <p>14 read this before, but I just want to ask you about</p> <p>15 whether you agree with a particular allegation.</p> <p>16 Paragraph 18 says that, "By June 2011, AVL was running</p> <p>17 tests at various times in all four of these test cells.</p> <p>18 FME knew of all of these AVL contracts and operations</p> <p>19 from inception through June 2011 and never voiced any</p> <p>20 concerns regarding FME's compliance with environmental</p> <p>21 laws."</p> <p>22 Isn't it true that the fuel limitation contained in</p> <p>23 the permit was discussed by representatives of FME and</p> <p>24 AVL before the contract was signed in 2008?</p> <p>25 A State that question again, please?</p>	<p>1 Q Paragraph 58. This is -- it says that FME had</p> <p>2 represented that it was in compliance with applicable</p> <p>3 environmental laws, were knowingly and recklessly false.</p> <p>4 This relates to the question I just asked you.</p> <p>5 A Um-hmm.</p> <p>6 Q I believe you testified that you personally aren't aware</p> <p>7 of any ongoing noncompliance by FME as of the date the</p> <p>8 Master Agreement was signed?</p> <p>9 A That's correct.</p> <p>10 Q Okay. Paragraph 64 says, "AVL believed and reasonably</p> <p>11 relied on FME's misrepresentations by entering into the</p> <p>12 Agreement and thereafter securing customer contracts and</p> <p>13 investing in the facility."</p> <p>14 Do you know what misrepresentations are referenced</p> <p>15 in that paragraph?</p> <p>16 A I do not --</p> <p>17 MR. HERRMANN: Object to foundation. Go ahead.</p> <p>18 A I do not because I did not prepare this, obviously.</p> <p>19 BY MR. DeGEORGE:</p> <p>20 Q All right. And then finally, paragraph 71 on page 16,</p> <p>21 it alleges, "FME knew AVL was unaware that the facility</p> <p>22 lacked the proper permitting."</p> <p>23 Do you have any knowledge about that allegation?</p> <p>24 A Not personally, no.</p> <p>25 Q Okay.</p>

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<p>Page 146</p> <p>1 MR. DeGEORGE: Thank you. I have no further 2 questions. Your attorney might, but I don't. 3 MR. HERRMANN: I have no questions. Thank you. 4 VIDEOGRAPHER: This is the end of media number two 5 and concludes the deposition of Mr. Ray Corbin. We're 6 going off the record at 12:55 p.m. 7 (Deposition concluded at 12:55 p.m.) 8 * * * 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 148</p> <p>1 DEPOSITION ERRATA SHEET 2 3 4 Case Caption: AVL Powertrain Engineering, Inc. 5 vs. Fairbanks Morse Engine, et al. 6 7 November 12, 2015, deposition of RAYMOND CORBIN 8 9 DECLARATION UNDER PENALTY OF PERJURY 10 11 I declare under penalty of perjury that I have read the 12 entire transcript of my deposition taken in the captioned 13 matter or the same has been read to me, and the same is true 14 and accurate, save and except for changes and/or corrections, 15 if any, as indicated by me on the DEPOSITION ERRATA SHEET 16 hereof, with the understanding that I offer these changes as 17 if still under oath. 18 Signed on the ____ day of _____, 2015. 19 20 21 _____ 22 RAYMOND CORBIN 23 24 25</p>
<p>Page 147</p> <p>1 State of Michigan) 2 County of Oakland) 3 Certificate of Notary Public - Court Reporter 4 5 I certify that this transcript is a complete, true, and 6 correct record of the testimony of the witness held in this 7 case. 8 9 I also certify that prior to taking this deposition, the 10 witness was duly sworn or affirmed to tell the truth. 11 12 I further certify that I am not a relative or an 13 employee of or an attorney for a party; and that I am not 14 financially interested, directly or indirectly, in the 15 matter. 16 17 I hereby set my hand this 30th day of November, 2015. 18 19 20 21  22 Elizabeth G. LaBarge, CSR-4467 23 Certified Shorthand Reporter 24 Notary Public, Wayne County, Michigan 25</p>	<p>Page 149</p> <p>1 DEPOSITION ERRATA SHEET 2 Page No. ____ Line No. ____ Change to: _____ 3 _____ 4 Reason for change: _____ 5 Page No. ____ Line No. ____ Change to: _____ 6 _____ 7 Reason for change: _____ 8 Page No. ____ Line No. ____ Change to: _____ 9 _____ 10 Reason for change: _____ 11 Page No. ____ Line No. ____ Change to: _____ 12 _____ 13 Reason for change: _____ 14 Page No. ____ Line No. ____ Change to: _____ 15 _____ 16 Reason for change: _____ 17 Page No. ____ Line No. ____ Change to: _____ 18 _____ 19 Reason for change: _____ 20 Page No. ____ Line No. ____ Change to: _____ 21 _____ 22 Reason for change: _____ 23 24 SIGNATURE: _____ DATE: _____ 25 RAYMOND CORBIN</p>

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